रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

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सं. 26] नई दिल्ली, जून 23—जून 29, 2019, शनिवार/ आषाढ़ 2—आषाढ़ 8, 1941
No. 26] NEW DELHI, JUNE 23—JUNE 29, 2019, SATURDAY/ ASADHA 2— ASADHA—8, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 18 फरवरी, 2019

का.आ.1065.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के उच्चायोग दारेस्सलाम मैं डॉ. शुभम श्रीवास्तव, सहायक अनुभाग अधिकारी को दिनांक 18 फरवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/06/2018]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 18th February, 2019

S.O.1065.— Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Dr. SHUBHAM SRIVASTAVA, Assistant Section Officer as Assistant Consular Officer in High Commission of India, Dar-es-Salaam to perform the Consular services with effect from 18 February, 2019.

[No. T-4330/06/2018]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 26 अप्रैल, 2019

का.आ.1066.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के राज दूतावास, बहरीन में श्री अभिषेक कुमार, सहायक अनुभाग अधिकारी को दिनांक 26 अप्रैल 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 26th April, 2019

S.O.1066.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Abhishek Kumar, ASO in Embassy of India, Bahrain to perform the Consular services as Assistant Consular Officer with effect from 26 April 2019.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 30 अप्रैल, 2019

का. आ.1067.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के राज दूतावास, ट्यूनिस में श्री विनोद शर्मा, सहायक अनुभाग अधिकारी को दिनांक 30 अप्रैल 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 30th April 2019

S.O.1067.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Vinod Sharma, Assistant Section Officer in Embassy of India, Tunis to perform consular services as Assistant Consular Officer with effect from 30 April, 2019.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 30 अप्रैल, 2019

का.आ.1068.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के राज दूतावास, रेक्याविक में श्री अनिल कुमार राठी, सहायक अनुभाग अधिकारी को दिनांक 30 अप्रैल 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2016]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 30th April, 2019

S.O.1068.—Statutory Order: In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Anil Kumar Rathee, Assistant Section Officer in the Embassy of India, Reykjavik to perform the Consular services as Assistant Consular Officer with effect from 30 April 2019.

[No. T-4330/01/2016]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 8 मई, 2019

का.आ. 1069.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के राज दूताबास टोक्यो, में श्री संदीप सिंह, सहायक अनुभाग अधिकारी को दिनांक 08 मई 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/02/2018]

टी. अजुङ्ग्ला जमीर, निदेशक (सी.पी.वी.)

New Delhi, the 8th May, 2019

S.O.1069.—Statutory Order : In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sandeep Singh, Assistant Section Officer in the Embassy of India, Tokyo to perform the consular services as Assistant Consular Officer with effect from 08 May 2019.

[No.T-4330/02/2018]

T. AJUNGLA JAMIR, Director (CPV)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 28 नवम्बर, 2018

का.आ.1070 .—भारतीय आयुर्विज्ञान परिषद अधिनियम,1956(1956 का 102) की धारा 11 की उप धारा(2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित, और संशोधन करती है, अर्थात्:-

उक्त प्रथम अनुसूची में

(i) 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' शीर्षक के अधीन [जिसे इसके आगे कालम (2) कहा गया है] "कालीकट विश्वविद्यालय/केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर" के सामने अंतिम प्रविष्टि के पश्चात और 'पंजीकरण के लिए संक्षिप्तिकरण' [जिसे इसके आगे कालम (3) कहा गया है] से संबंधित प्रविष्टि के संबंध में निम्नलिखित अंत:स्थापित किया जाएगा. अर्थात्:-

(2)	(3)
"डिप्लोमा इन रेडियो-थेरेपी"	डीएमआरटी (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह गवर्नमेंट मेडिकल कॉलेज, कोझिकोड में अकादमिक सत्र 2014-15 तक में प्रविष्ट छात्रों के संबंध में कालीकट विश्वविद्यालय/केरल स्वास्थ्य विज्ञान विश्वविद्यालय, तृश्शूर द्वारा प्रदत्त होगी।

[सं. जेड-20015/94/2018-एमई-I]

डी. वी. के. राव, संयुक्त सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 28th November, 2018

S.O.1070.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule —

a) against "University of Calicut/ Kerala University of Health Sciences, Thrissur", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:-

(2)	(3)
"Diploma in Radio-Therapy"	DMRT (This shall be a recognized medical qualification when granted by University of Calicut/ Kerala University of Health Sciences, Thrissur in respect of students admitted at Government Medical College, Kozhikode till the academic session 2014-15).

[No. Z-20015/94/2018-ME-I]

D.V.K. RAO, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 18 जून, 2019

का. आ.1071.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि लोक हित में यह आवश्यक है कि आंध्र प्रदेश राज्य में पेट्रोलियम उत्पादों के परिवहन के लिए पारादीप- हैदराबाद पाइपलाइन परियोजना के क्रियान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमी में जो इस से उपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई भी व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस (21) दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री बी वेंकटेसु, सक्षम प्राधिकारी (आंध्र प्रदेश), इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन्स प्रभाग), पारादीप-हैदराबाद पाइपलाइन परियोजना, चौथी मंजिल, एल.आई.सी. एनेक्सी भवन, थिक्कना (डायमंड पार्क) रोड़, आर.टी.सी. कॉम्पलेक्स के पास, विशाखापटनम - 530004, आंध्र प्रदेश राज्य को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

जिला : विजियानगरम		राज्य : आँध्र प्रदेश			
मंडल का नाम	ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल		
			हेक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)	(6)
गुर्ला	सदानंदापुरम	73/5P	00	00	12
गुर्ला	नगल्लावलसा	86/15	00	00	11
		87/16	00	00	76
		84/29	00	01	39
		84/27	00	01	76
		84/24	00	00	11
		83/5	00	00	26
		83/4	00	00	20
		42/10	00	03	31
		42/5	00	00	66
		41/12P	00	01	48
		41/6	00	00	46
		41/1P	00	01	26

(1)	(2)	(3)	(4)	(5)	(6)
		40/23	00	00	39
		40/16	00	00	56
		40/15	00	00	52
		40/9	00	00	98
		40/8	00	00	99
		39/11	00	00	24
		39/22	00	00	36
		39/23	00	00	28
		39/13	00	02	86
		39/14	00	00	12
		39/3P	00	00	84
		37/24	00	00	66
		37/13	00	00	19
		34/15	00	01	35
		34/13	00	00	83
		34/10	00	00	47
		34/9	00	00	51
		65/1	00	02	05
		65/8	00	01	48
		65/2	00	03	71
		29/10	00	03	52
		29/13	00	02	04
		66/2P	00	00	58
		66/3P	00	01	19
		66/4	00	02	74
		87/13	00	00	11
		40/26	00	03	04
		19/93	00	00	41
		85/P	00	02	03
		34/18	00	01	52
		34/7	00	00	11
		29/4	00	00	21
		29/5	00	04	56
		66/5	00	00	41
		66/17	00	01	02
गुर्ला	जम्मु	88/11	00	00	27

(1)	(2)	(3)	(4)	(5)	(6)
		90/3	00	00	99
		90/4	00	00	21
		90/7	00	01	57
		93/12	00	03	30
		93/13	00	01	91
		93/11	00	00	12
		93/7	00	02	70
		93/5	00	00	38
		93/6	00	04	56
		97/23	00	02	03
		97/21	00	00	36
		97/15	00	03	37
		275/3	00	03	17
		275/10P	00	09	90
		270/26	00	02	25
		269/12	00	01	62
		269/14	00	01	30
		269/10	00	01	96
		269/8	00	00	11
		269/5	00	00	67
		112/5	00	00	54
		111/1	00	00	52
		111/3	00	02	82
		109/5	00	01	93
		109/13	00	00	55
		110/1	00	00	40
		108/14	00	01	35
		108/18	00	02	05
		108/19	00	00	44
		108/12	00	00	31
		108/24	00	01	53
		108/25	00	01	65
		117/2	00	08	92
		119/1	00	04	37
		126/9	00	00	60
		123/5	00	00	13

(1)	(2)	(3)	(4)	(5)	(6)
		123/2	00	01	22
		151/11	00	00	63
		151/15	00	00	82
		151/10	00	01	64
		182/27	00	00	36
		182/18	00	00	46
		182/17	00	02	89
		183/22	00	02	26
		183/23	00	01	30
		183/4	00	00	51
		183/2	00	00	41
		179/12	00	01	70
		179/11	00	00	49
		179/10	00	01	99
		179/2	00	00	39
		178/3	00	00	37
		176/31	00	00	71
		176/1	00	01	06
		175/23	00	12	10
		197/19	00	06	58
		197/20	00	00	68
		197/30	00	00	73
		197/29	00	00	83
		197/28	00	00	29
		197/27	00	00	94
		196/20	00	00	36
		196/24	00	10	33
		196/23	00	00	67
		196/22	00	00	27
		211/19	00	00	12
		211/7	00	00	23
		211/8	00	00	73
		211/10	00	02	86
		211/15	00	04	26
		211/14	00	02	43
		216/4	00	02	44

(1)	(2)	(3)	(4)	(5)	(6)
		216/3	00	05	94
		151/13	00	00	39
		176/2	00	02	64
		216/2	00	06	08
		214/1	00	00	11
		89	00	00	51
		93/3	00	00	11
		95/25	00	00	81
		97/20	00	00	71
		97/19	00	03	04
		97/18	00	04	15
		97/17	00	02	94
		97/16	00	01	93
		275/5	00	01	22
		275/4	00	02	03
		275/4	00	02	64
		111/4	00	00	21
		109/12	00	00	30
		108/16	00	02	64
		117/3	00	00	41
		126/37	04	24	94
		126/33	00	02	84
		151/16	00	00	41
		151/4	00	01	83
		151/8	00	00	31
		185/1	00	00	11
		182/28	00	00	11
		95/2	00	02	03
		95/1	00	00	41
		275/5P	00	00	11
		275/7	00	00	71
		275/12	00	00	51
		270/29P	00	03	04
		270/29P	00	01	93
		20/96	00	60	71
		269/6	00	01	12

(1)	(2)	(3)	(4)	(5)	(6)
		109/6	00	00	81
		184/1	00	00	81
		97/24	00	07	29
गुर्ला	गरिड़ा	3/4	00	00	45
		99/23	00	02	72
		99/24	00	01	57
		99/27	00	00	71
		99/15	00	00	72
		76/7	00	00	47
		75/14	00	02	22
		75/12	00	00	64
		79/15	00	00	71
		79/12	00	01	91
		80/12	00	07	02
		80/4	00	02	76
		80/2	00	01	79
		31/7	00	01	40
		32/19	00	02	33
		32/18	00	01	07
		32/17	00	03	42
		30/15	00	00	26
		30/6	00	00	23
		30/5	00	00	26
		30/4	00	00	31
		30/03	00	00	67
		34/34	00	02	46
		34/22	00	00	61
		34/25	00	00	41
		34/14	00	00	29
		34/16	00	00	62
		34/09	00	00	30
		34/4	00	00	52
		34/02	00	00	75
		34/03	00	03	13
		35/5	00	00	27
		35/08	00	00	94

(1)	(2)	(3)	(4)	(5)	(6)
		35/07	00	00	60
		35/34	00	00	22
		12/12	00	01	73
		12/13	00	03	14
		12/11	00	00	26
		12/09	00	00	85
		7/23	00	00	63
		7/22	00	00	90
		7/21	00	01	48
		7/20	00	02	99
		7/19	00	01	41
		7/14	00	01	93
		6/21	00	02	64
		3/3	00	08	10
		3/5	00	01	25
		2/12	00	05	98
		3/2	00	02	03
		12	00	06	58
		75/15	00	00	41
गुर्ला	गोर्लापेटा जगन्नाधपुरम	23/21	00	02	10
		23/18	00	06	86
		23/17	00	01	39
		23/10	00	00	13
		23/11	00	00	94
		23/9	00	00	31
		22/12	00	03	45
		22/25	00	01	40
		18/23	00	02	94
		18/22	00	08	00
		14/8	00	02	16
		14/3	00	05	96
		15/1	00	00	43
		11/16	00	03	40
गुर्ला	गोषाड़ा	57/4	00	00	92
		24/8	00	01	09
		24/10	00	00	48

(1)	(2)	(3)	(4)	(5)	(6)
		21/10	00	00	22
		20/10	00	00	44
		15/15	00	00	56
		15/14	00	00	44
		57/6	00	00	45
		57/9	00	00	96
		64/2	00	00	14
		66/4	00	01	79
		66/5	00	00	54
		66/15	00	00	93
		66/13	00	01	82
		68/9	00	01	28
		68/7	00	01	14
		68/4	00	00	32
		64/1	00	00	21
		68/16	00	03	75
		15/11	00	01	12
		66	00	00	81
		57/5	00	03	35
गुर्ला	कलवाचेर्ला	60/11	00	01	33
		62/5	00	00	42
		62/9	00	05	74
		29/14	00	03	30
		29/12	00	00	26
		29/10	00	01	54
		29/9	00	01	30
		29/8	00	06	58
		29/33	00	02	64
		29/2	00	00	16
		28/2	00	04	01
		28/1	00	02	77
		32/9	00	01	40
		32/11	00	01	71
		32/12	00	01	22
		34/1	00	01	23
		39/6	00	07	73

(1)	(2)	(3)	(4)	(5)	(6)
		39/3	00	00	52
		2/6	00	00	30
		2/4	00	02	03
		2/5	00	03	04
		41/30	00	06	28
		41/29	00	01	83
		39/1	00	00	41
		41/27	00	00	21
		41/31	00	02	43
		39/2	00	02	64
		39/4	00	01	02
		40/6	00	00	41
		40/7	00	00	41
		40/22	00	01	32
		64/1	00	03	44
		60/12	00	00	81
		40/2	00	02	03
		28/3	00	02	03
		40/3	00	02	64
		40/1	00	01	62
गुर्ला	कोटागंड्रेडु	92/2	00	00	41
		92/1	00	02	37
		88/14	00	00	18
		88/12	00	00	30
		88/2	00	01	52
		86/2	00	00	35
		64/19	00	03	55
		64/16	00	01	35
		67/16	00	01	17
		65/6	00	00	27
		59/8	00	00	77
		31/24	00	02	28
		92/3	00	00	64
		86/1	00	00	50
		63/7	00	04	48
		63/9	00	04	85

(1)	(2)	(3)	(4)	(5)	(6)
		64/22	00	00	49
		64/21	00	00	13
		64/5	00	02	04
		64/2	00	01	26
		48/17	00	02	54
		48/3	00	00	53
		48/1	00	02	47
		31/11	00	00	13
		31/25	00	03	68
		31/9	00	01	91
		31/10	00	01	34
		31/4	00	00	12
		34/4	00	00	15
		34/2	00	00	18
		34/1	00	00	74
		31/32	00	03	04
		31/28	00	04	05
		64/11	00	00	11
		64/10	00	04	36
		48/7	00	01	42
		48/8	00	01	22
गुर्ला	आनंदपुरम एंड बिट	194/3	00	00	69
		194/1	00	02	73
		195/3	00	00	27
		195/6	00	00	40
		195/7	00	00	33
		195/2	00	00	46
		197/19	00	01	18
		197/13	00	00	40
		197/6	00	00	56
		197/8	00	00	40
		200/4	00	05	88
		199/12	00	00	14
		199/9	00	00	41
		195/14	00	04	56
		195/15	00	00	21

(1)	(2)	(3)	(4)	(5)	(6)
गुर्ला	केल्ला	8/22	00	01	79
		8/18	00	01	53
		8/24	00	03	79
		8/20	00	00	44
		8/19	00	05	79
		13/23	00	02	33
		13/21	00	00	55
		13/17	00	01	63
		13/16	00	03	90
		347/20	00	00	11
		346/7	00	04	01
		346/6	00	02	03
		346/8	00	03	36
		14/10	00	01	63
		12/1	00	04	76
		12	00	00	21
नेल्लिमर्ला	बूरड़ापेटा	121/58	00	01	68
		121/57	00	00	11
		121/49	00	00	38
		119/23	00	02	49
		119/26	00	00	97
		119/25	00	00	10
		119/12	00	00	43
		114/24	00	01	46
		84/36	00	01	99
		84/35	00	00	53
		84/34	00	02	44
		113/6	00	00	45
		85/22	00	01	19
		85/13	00	00	81
		85/8	00	00	50
		85/6	00	00	41
		86/36	00	01	95
		86/23	00	00	82
		73/35	00	00	30
		73/28	00	02	95

(1)	(2)	(3)	(4)	(5)	(6)
		73/24	00	01	12
		73/8	00	00	16
		73/9	00	00	58
		73/10	00	01	79
		73/6	00	00	61
		71/10	00	00	20
		71/19	00	00	60
		71/15	00	01	02
		71/16	00	00	44
		70/27	00	00	21
		70/19	00	00	10
		70/20	00	00	11
		70/6	00	00	36
		70/2	00	00	10
		70/7	00	00	31
		70/1	00	01	56
		66/52	00	00	11
		64/14	00	01	171
		64/12	00	01	10
		64/02	00	00	22
		63/6	00	00	31
		63/4	00	01	42
		63/03	00	00	23
		63/02	00	00	20
		58/69	00	00	18
		58/17	00	07	42
		58/60	00	00	77
		58/59	00	00	10
		58/42	00	00	75
		57/23	00	01	55
		57/21	00	00	25
		57/18	00	00	29
		57/19	00	00	10
		57/15	00	01	12
		54/19	00	00	31
		54/16	00	00	18

(1)	(2)	(3)	(4)	(5)	(6)
		54/37	00	00	76
		52/16	00	04	72
		52/14	00	00	35
		52/11	00	00	31
		52/8	00	00	38
		52/5	00	00	45
		52/2	00	00	13
		09/02	00	00	16
		09/01	00	00	96
		08/02	00	13	83
		01/33	00	01	57
		01/32	00	00	93
		03/25	00	00	34
		03/24	00	00	36
		03/04	00	00	36
		02/12	00	00	21
		02/18	00	00	22
		02/19	00	00	24
		2/20	00	00	12
		2/21	00	00	26
		02/23	00	00	57
		02/27	00	00	58
		84/18	00	01	42
		89/3	00	01	62
		86/34	00	01	93
		85/17	00	00	21
		89/20	00	00	81
		89/5	00	00	81
		89/4	00	01	12
		85	00	00	21
		121/16	00	01	22
		121/15	00	00	71
		121/14	00	00	51
नेल्लिमर्ला	पारासाम	271/21	00	00	10
बोंडापल्लि	बिल्लालावलसा	128/20	00	01	26
		129/6	00	00	13

(1)	(2)	(3)	(4)	(5)	(6)
		129/5	00	01	01
		129/3	00	00	69
		129/2	00	01	29
		129/1	00	00	95
		124/13	00	00	40
		124/10	00	00	96
		124/8	00	01	67
		123/5	00	02	65
		120/17	00	00	54
		120/9	00	01	80
		120/8	00	01	98
		89/10	00	03	17
		88/12	00	00	61
		88/10	00	00	27
		88/13	00	00	48
		81/30	00	01	28
		85/4	00	01	18
		85/3	00	00	53
		85/1	00	07	06
		48/2	00	00	12
		48/3	00	00	58
		48/4	00	00	43
		49/13	00	03	88
		49/22	00	00	61
		49/23	00	00	45
		49/24	00	00	31
		52/15	00	01	06
		52/14	00	00	59
		47/1	00	02	44
		37/7	00	00	10
		36/11	00	01	19
		36/4	00	03	14
		23/16	00	01	08
		26/3	00	00	11
		4/2	00	00	29
		122/18	00	00	21

(1)	(2)	(3)	(4)	(5)	(6)
		122/14	00	00	41
		120/20	00	01	62
		120/19	00	00	11
		120/18	00	00	11
		37/4	00	01	12
		124/12	00	00	81
		88/5	00	03	24
बोंडापल्लि	बोंडापल्लि	720/9	00	00	10
		720/17	00	00	44
बोंडापल्लि	गरुड़ाबिल्लि	52/1	00	03	06
		47/3	00	05	61
		47/10	00	00	67
		44/3	00	05	31
		42/3	00	00	26
		43/11	00	01	12
		39/11	00	01	53
		39/1	00	00	32
		37/20	00	01	59
		37/14	00	01	76
		19/6	00	00	31
		17/24	00	00	88
		16/6	00	01	39
		15/17	00	01	69
		148/6	00	00	18
		148/8	00	00	91
		149/1	00	01	93
		172/14	00	01	25
		171/8	00	00	90
		171/9	00	00	37
		170/11	00	02	45
		170/12	00	00	39
		170/10	00	00	18
		170/19	00	00	44
		170/22	00	00	22
		174/11	00	00	62
		178/3	00	01	01

(1)	(2)	(3)	(4)	(5)	(6)
		176/5	00	03	96
		176/4	00	00	12
		176/3	00	00	79
		156/1	00	03	63
		170/15	00	00	41
		172/15	00	00	21
		36/33	00	00	21
		36/34	00	01	62
		178/12	00	03	04
बोंडापल्लि	केराटाम	17/16	00	01	17
		17/9	00	00	41
		18/6	00	01	79
		18/5	00	00	45
		22/15	00	01	25
		22/16	00	01	03
		22/17	00	00	21
		24/19	00	00	34
		24/5	00	00	49
		24/1	00	18	95
		30/18	00	00	59
		30/14	00	00	79
		30/15	00	00	50
		30/9	00	01	22
		30/2	00	00	27
		30/10	00	00	10
		36/17	00	01	13
		36/2	00	01	07
		54/22	00	00	10
		54/5	00	00	12
		53/22	00	00	93
		53/21	00	00	32
		53/18	00	01	12
		52/25	00	00	10
		52/20	00	01	53
		52/15	00	00	10
		52/7	00	00	47

(1)	(2)	(3)	(4)	(5)	(6)
		56/18	00	00	18
		56/9	00	00	29
		49/3	00	01	80
		77/1	00	03	80
		24/17	00	00	45
		30/20	00	00	74
		30/8	00	00	47
		36/15	00	01	25
		36/9	00	01	83
		36/7	00	00	97
		54/6	00	00	63
		52/19	00	00	53
		52/4	00	00	91
		56/2	00	00	71
		50/57	00	00	92
		50/34	00	01	70
		50/24	00	00	10
		50/33	00	00	32
		49/18	00	02	67
		49/2	00	01	79
		80/6	00	00	31
		77/3	00	01	68
		22/18	00	12	55
		52/24	00	01	52
		24/27	00	00	21
		24/10	00	02	03
		24/11	00	01	72
बोंडापल्लि	कोंडाकिंडाम	49/21	00	04	48
		49/19	00	07	24
		52/34	00	00	68
		52/38	00	00	58
		52/33	00	00	24
		52/30	00	00	41
		52/27	00	00	27
		52/28	00	00	29
		52/11	00	00	19

(1)	(2)	(3)	(4)	(5)	(6)
		52/9	00	00	43
		52/10	00	00	57
		54/3	00	00	51
		45/11	00	00	11
		45/4	00	00	19
		37/35	00	01	33
		5/4	00	00	10
		4/15	00	00	13
		4/14	00	01	39
		4/22	00	02	96
		37/36	00	01	72

अनुसूची

जिला : श्रीकाकुलम राज्य : आँध्र प्रदेश

मंडल का नाम	ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल		
			हेक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)	(6)
पोंदूरु	तोलापि	95/2	00	00	41
लावेरु	अदापाका	51/1	00	04	05
		111/15	00	01	32
		113/12	00	00	31
		67/19	00	01	02
		67/23	00	02	03
		111/8	00	04	45

[फा. सं. आर-11025(11)252/2017-ओआर-I/ई-21033]

शान्तनु धर, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 18th June, 2019

S.O.1071.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum products in the state of Andhra Pradesh a pipeline should be laid for implementing Paradip-Hyderabad Pipeline Project under Paradip-Hyderabad Pipeline by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub Section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri. B.Venkatesu, Competent Authority (Andhra Pradesh) Indian Oil Corporation Limited (Pipelines Division), Paradip Hyderabad Pipeline Project, 4th floor, LIC Annexe Building, Thikkana (Diamond Park) Road, Near RTC Complex, Visakhapatnam - 530004 within twenty one (21) days from the date on which the copies of this notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE

DISTRICT :VIZIANAGARAM **STATE : ANDHRA PRADESH**

MANDAL	VILLAGE	SURVEY NO.	AREA		
			Hectare	Are	Sq. Mt.
(1)	(2)	(3)	(4)	(5)	(6)
GURLA	SADANANDAPURAM	73/5P	00	00	12
GURLA	NAGALLAVALASA	86/15	00	00	11
		87/16	00	00	76
		84/29	00	01	39
		84/27	00	01	76
		84/24	00	00	11
		83/5	00	00	26
		83/4	00	00	20
		42/10	00	03	31
		42/5	00	00	66
		41/12P	00	01	48
		41/6	00	00	46
		41/1P	00	01	26
		40/23	00	00	39
		40/16	00	00	56
		40/15	00	00	52
		40/9	00	00	98
		40/8	00	00	99
		39/11	00	00	24
		39/22	00	00	36
		39/23	00	00	28
		39/13	00	02	86
		39/14	00	00	12
		39/3P	00	00	84
		37/24	00	00	66
		37/13	00	00	19
		34/15	00	01	35
		34/13	00	00	83
		34/10	00	00	47
		34/9	00	00	51
		65/1	00	02	05
		65/8	00	01	48
		65/2	00	03	71
		29/10	00	03	52
		29/13	00	02	04
		66/2P	00	00	58
		66/3P	00	01	19
		66/4	00	02	74
		87/13	00	00	11
		40/26	00	03	04
		19/93	00	00	41
		85/P	00	02	03
		34/18	00	01	52
		34/7	00	00	11
		29/4	00	00	21
		29/5	00	04	56

(1)	(2)	(3)	(4)	(5)	(6)
		66/5	00	00	41
		66/17	00	01	02
GURLA	JAMMU	88/11	00	00	27
		90/3	00	00	99
		90/4	00	00	21
		90/7	00	01	57
		93/12	00	03	30
		93/13	00	01	91
		93/11	00	00	12
		93/7	00	02	70
		93/5	00	00	38
		93/6	00	04	56
		97/23	00	02	03
		97/21	00	00	36
		97/15	00	03	37
		275/3	00	03	17
		275/10P	00	09	90
		270/26	00	02	25
		269/12	00	01	62
		269/14	00	01	30
		269/10	00	01	96
		269/8	00	00	11
		269/5	00	00	67
		112/5	00	00	54
		111/1	00	00	52
		111/3	00	02	82
		109/5	00	01	93
		109/13	00	00	55
		110/1	00	00	40
		108/14	00	01	35
		108/18	00	02	05
		108/19	00	00	44
		108/12	00	00	31
		108/24	00	01	53
		108/25	00	01	65
		117/2	00	08	92
		119/1	00	04	37
		126/9	00	00	60
		123/5	00	00	13
		123/2	00	01	22
		151/11	00	00	63
		151/15	00	00	82
		151/10	00	01	64
		182/27	00	00	36
		182/18	00	00	46
		182/17	00	02	89
		183/22	00	02	26
		183/23	00	01	30
		183/4	00	00	51
		183/2	00	00	41
		179/12	00	01	70
		179/11	00	00	49
		179/10	00	01	99
		179/2	00	00	39
		178/3	00	00	37
		176/31	00	00	71
		176/1	00	01	06
		175/23	00	12	10
		197/19	00	06	58
		197/20	00	00	68
		197/30	00	00	73

(1)	(2)	(3)	(4)	(5)	(6)
		197/29	00	00	83
		197/28	00	00	29
		197/27	00	00	94
		196/20	00	00	36
		196/24	00	10	33
		196/23	00	00	67
		196/22	00	00	27
		211/19	00	00	12
		211/7	00	00	23
		211/8	00	00	73
		211/10	00	02	86
		211/15	00	04	26
		211/14	00	02	43
		216/4	00	02	44
		216/3	00	05	94
		151/13	00	00	39
		176/2	00	02	64
		216/2	00	06	08
		89	00	00	51
		93/3	00	00	11
		95/25	00	00	81
		97/20	00	00	71
		97/19	00	03	04
		97/18	00	04	15
		97/17	00	02	94
		97/16	00	01	93
		275/5	00	01	22
		275/4	00	02	03
		275/4	00	02	64
		111/4	00	00	21
		109/12	00	00	30
		108/16	00	02	64
		117/3	00	00	41
		126/37	04	24	94
		126/33	00	02	84
		151/16	00	00	41
		151/4	00	01	83
		151/8	00	00	31
		185/1	00	00	11
		182/28	00	00	11
		95/2	00	02	03
		95/1	00	00	41
		275/5P	00	00	11
		275/7	00	00	71
		275/12	00	00	51
		270/29P	00	03	04
		270/29P	00	01	93
		20/96	00	60	71
		269/6	00	01	12
		109/6	00	00	81
		184/1	00	00	81
		97/24	00	07	29
GURLA	GARIDA	3/4	00	00	45
		99/23	00	02	72
		99/24	00	01	57
		99/27	00	00	71
		99/15	00	00	72
		76/7	00	00	47
		75/14	00	02	22
		75/12	00	00	64
		79/15	00	00	71

(1)	(2)	(3)	(4)	(5)	(6)
		79/12	00	01	91
		80/12	00	07	02
		80/4	00	02	76
		80/2	00	01	79
		31/7	00	01	40
		32/19	00	02	33
		32/18	00	01	07
		32/17	00	03	42
		30/15	00	00	26
		30/6	00	00	23
		30/5	00	00	26
		30/4	00	00	31
		30/03	00	00	67
		34/34	00	02	46
		34/22	00	00	61
		34/25	00	00	41
		34/14	00	00	29
		34/16	00	00	62
		34/09	00	00	30
		34/4	00	00	52
		34/02	00	00	75
		34/03	00	03	13
		35/5	00	00	27
		35/08	00	00	94
		35/07	00	00	60
		35/34	00	00	22
		12/12	00	01	73
		12/13	00	03	14
		12/11	00	00	26
		12/09	00	00	85
		7/23	00	00	63
		7/22	00	00	90
		7/21	00	01	48
		7/20	00	02	99
		7/19	00	01	41
		7/14	00	01	93
		6/21	00	02	64
		3/3	00	08	10
		3/5	00	01	25
		2/12	00	05	98
		3/2	00	02	03
		12	00	06	58
		75/15	00	00	41
GURLA	GORLAPETA_JAGANADHAPURAM	23/21	00	02	10
		23/18	00	06	86
		23/17	00	01	39
		23/10	00	00	13
		23/11	00	00	94
		23/9	00	00	31
		22/12	00	03	45
		22/25	00	01	40
		18/23	00	02	94
		18/22	00	08	00
		14/8	00	02	16
		14/3	00	05	96
		15/1	00	00	43
		11/16	00	03	40
GURLA	GOSADA	57/4	00	00	92
		24/8	00	01	09
		24/10	00	00	48
		21/10	00	00	22

(1)	(2)	(3)	(4)	(5)	(6)
		20/10	00	00	44
		15/15	00	00	56
		15/14	00	00	44
		57/6	00	00	45
		57/9	00	00	96
		64/2	00	00	14
		66/4	00	01	79
		66/5	00	00	54
		66/15	00	00	93
		66/13	00	01	82
		68/9	00	01	28
		68/7	00	01	14
		68/4	00	00	32
		64/1	00	00	21
		68/16	00	03	75
		15/11	00	01	12
		66	00	00	81
		57/5	00	03	35
GURLA	KALAVACHERLA	60/11	00	01	33
		62/5	00	00	42
		62/9	00	05	74
		29/14	00	03	30
		29/12	00	00	26
		29/10	00	01	54
		29/9	00	01	30
		29/8	00	06	58
		29/33	00	02	64
		29/2	00	00	16
		28/2	00	04	01
		28/1	00	02	77
		32/9	00	01	40
		32/11	00	01	71
		32/12	00	01	22
		34/1	00	01	23
		39/6	00	07	73
		39/3	00	00	52
		2/6	00	00	30
		2/4	00	02	03
		2/5	00	03	04
		41/30	00	06	28
		41/29	00	01	83
		39/1	00	00	41
		41/27	00	00	21
		41/31	00	02	43
		39/2	00	02	64
		39/4	00	01	02
		40/6	00	00	41
		40/7	00	00	41
		40/22	00	01	32
		64/1	00	03	44
		60/12	00	00	81
		40/2	00	02	03
		28/3	00	02	03
		40/3	00	02	64
		40/1	00	01	62
GURLA	KOTTA GANDREDU	92/2	00	00	41
		92/1	00	02	37
		88/14	00	00	18
		88/12	00	00	30
		88/2	00	01	52
		86/2	00	00	35

(1)	(2)	(3)	(4)	(5)	(6)
		64/19	00	03	55
		64/16	00	01	35
		67/16	00	01	17
		65/6	00	00	27
		59/8	00	00	77
		31/24	00	02	28
		92/3	00	00	64
		86/1	00	00	50
		63/7	00	04	48
		63/9	00	04	85
		64/22	00	00	49
		64/21	00	00	13
		64/5	00	02	04
		64/2	00	01	26
		48/17	00	02	54
		48/3	00	00	53
		48/1	00	02	47
		31/11	00	00	13
		31/25	00	03	68
		31/9	00	01	91
		31/10	00	01	34
		31/4	00	00	12
		34/4	00	00	15
		34/2	00	00	18
		34/1	00	00	74
		31/32	00	03	04
		31/28	00	04	05
		64/11	00	00	11
		64/10	00	04	36
		48/7	00	01	42
		48/8	00	01	22
GURLA	ANANDAPURAM END BIT	194/3	00	00	69
		194/1	00	02	73
		195/3	00	00	27
		195/6	00	00	40
		195/7	00	00	33
		195/2	00	00	46
		197/19	00	01	18
		197/13	00	00	40
		197/6	00	00	56
		197/8	00	00	40
		200/4	00	05	88
		199/12	00	00	14
		199/9	00	00	41
		195/14	00	04	56
		195/15	00	00	21
GURLA	KELLA	8/22	00	01	79
		8/18	00	01	53
		8/24	00	03	79
		8/20	00	00	44
		8/19	00	05	79
		13/23	00	02	33
		13/21	00	00	55
		13/17	00	01	63
		13/16	00	03	90
		347/20	00	00	11
		346/7	00	04	01
		346/6	00	02	03
		346/8	00	03	36
		14/10	00	01	63
		12/1	00	04	76
		12	00	00	21

(1)	(2)	(3)	(4)	(5)	(6)
NELLIMARLA	BURUDUPETA	121/58	00	01	68
		121/57	00	00	11
		121/49	00	00	38
		119/23	00	02	49
		119/26	00	00	97
		119/25	00	00	10
		119/12	00	00	43
		114/24	00	01	46
		84/36	00	01	99
		84/35	00	00	53
		84/34	00	02	44
		113/6	00	00	45
		85/22	00	01	19
		85/13	00	00	81
		85/8	00	00	50
		85/6	00	00	41
		86/36	00	01	95
		86/23	00	00	82
		73/35	00	00	30
		73/28	00	02	95
		73/24	00	01	12
		73/8	00	00	16
		73/9	00	00	58
		73/10	00	01	79
		73/6	00	00	61
		71/10	00	00	20
		71/19	00	00	60
		71/15	00	01	02
		71/16	00	00	44
		70/27	00	00	21
		70/19	00	00	10
		70/20	00	00	11
		70/6	00	00	36
		70/2	00	00	10
		70/7	00	00	31
		70/1	00	01	56
		66/52	00	00	11
		64/14	00	01	171
		64/12	00	01	10
		64/02	00	00	22
		63/6	00	00	31
		63/4	00	01	42
		63/03	00	00	23
		63/02	00	00	20
		58/69	00	00	18
		58/17	00	07	42
		58/60	00	00	77
		58/59	00	00	10
		58/42	00	00	75
		57/23	00	01	55
		57/21	00	00	25
		57/18	00	00	29
		57/19	00	00	10
		57/15	00	01	12
		54/19	00	00	31
		54/16	00	00	18
		54/37	00	00	76
		52/16	00	04	72
		52/14	00	00	35
		52/11	00	00	31
		52/8	00	00	38

(1)	(2)	(3)	(4)	(5)	(6)
		52/5	00	00	45
		52/2	00	00	13
		09/02	00	00	16
		09/01	00	00	96
		08/02	00	13	83
		01/33	00	01	57
		01/32	00	00	93
		03/25	00	00	34
		03/24	00	00	36
		03/04	00	00	36
		02/12	00	00	21
		02/18	00	00	22
		02/19	00	00	24
		2/20	00	00	12
		2/21	00	00	26
		02/23	00	00	57
		02/27	00	00	58
		84/18	00	01	42
		89/3	00	01	62
		86/34	00	01	93
		85/17	00	00	21
		89/20	00	00	81
		89/5	00	00	81
		89/4	00	01	12
		85	00	00	21
		121/16	00	01	22
		121/15	00	00	71
		121/14	00	00	51
NELLIMARLA	PARASAM	271/21	00	00	10
BONDAPALLI	BILLALAVALASA	128/20	00	01	26
		129/6	00	00	13
		129/5	00	01	01
		129/3	00	00	69
		129/2	00	01	29
		129/1	00	00	95
		124/13	00	00	40
		124/10	00	00	96
		124/8	00	01	67
		123/5	00	02	65
		120/17	00	00	54
		120/9	00	01	80
		120/8	00	01	98
		89/10	00	03	17
		88/12	00	00	61
		88/10	00	00	27
		88/13	00	00	48
		81/30	00	01	28
		85/4	00	01	18
		85/3	00	00	53
		85/1	00	07	06
		48/2	00	00	12
		48/3	00	00	58
		48/4	00	00	43
		49/13	00	03	88
		49/22	00	00	61
		49/23	00	00	45
		49/24	00	00	31
		52/15	00	01	06
		52/14	00	00	59
		47/1	00	02	44

(1)	(2)	(3)	(4)	(5)	(6)
		37/7	00	00	10
		36/11	00	01	19
		36/4	00	03	14
		23/16	00	01	08
		26/3	00	00	11
		4/2	00	00	29
		122/18	00	00	21
		122/14	00	00	41
		120/20	00	01	62
		120/19	00	00	11
		120/18	00	00	11
		37/4	00	01	12
		124/12	00	00	81
		88/5	00	03	24
BONDAPALLI	BONDAPALLE	720/9	00	00	10
		720/17	00	00	44
BONDAPALLI	GARUDABILLI	52/1	00	03	06
		47/3	00	05	61
		47/10	00	00	67
		44/3	00	05	31
		42/3	00	00	26
		43/11	00	01	12
		39/11	00	01	53
		39/1	00	00	32
		37/20	00	01	59
		37/14	00	01	76
		19/6	00	00	31
		17/24	00	00	88
		16/6	00	01	39
		15/17	00	01	69
		148/6	00	00	18
		148/8	00	00	91
		149/1	00	01	93
		172/14	00	01	25
		171/8	00	00	90
		171/9	00	00	37
		170/11	00	02	45
		170/12	00	00	39
		170/10	00	00	18
		170/19	00	00	44
		170/22	00	00	22
		174/11	00	00	62
		178/3	00	01	01
		176/5	00	03	96
		176/4	00	00	12
		176/3	00	00	79
		156/1	00	03	63
		170/15	00	00	41
		172/15	00	00	21
		36/33	00	00	21
		36/34	00	01	62
		178/12	00	03	04
BONDAPALLI	KARATAM	17/16	00	01	17
		17/9	00	00	41
		18/6	00	01	79
		18/5	00	00	45
		22/15	00	01	25
		22/16	00	01	03
		22/17	00	00	21
		24/19	00	00	34

(1)	(2)	(3)	(4)	(5)	(6)
		24/5	00	00	49
		24/1	00	18	95
		30/18	00	00	59
		30/14	00	00	79
		30/15	00	00	50
		30/9	00	01	22
		30/2	00	00	27
		30/10	00	00	10
		36/17	00	01	13
		36/2	00	01	07
		54/22	00	00	10
		54/5	00	00	12
		53/22	00	00	93
		53/21	00	00	32
		53/18	00	01	12
		52/25	00	00	10
		52/20	00	01	53
		52/15	00	00	10
		52/7	00	00	47
		56/18	00	00	18
		56/9	00	00	29
		49/3	00	01	80
		77/1	00	03	80
		24/17	00	00	45
		30/20	00	00	74
		30/8	00	00	47
		36/15	00	01	25
		36/9	00	01	83
		36/7	00	00	97
		54/6	00	00	63
		52/19	00	00	53
		52/4	00	00	91
		56/2	00	00	71
		50/57	00	00	92
		50/34	00	01	70
		50/24	00	00	10
		50/33	00	00	32
		49/18	00	02	67
		49/2	00	01	79
		80/6	00	00	31
		77/3	00	01	68
		22/18	00	12	55
		52/24	00	01	52
		24/27	00	00	21
		24/10	00	02	03
		24/11	00	01	72
BONDAPALLI	KONDAKINDAM	49/21	00	04	48
		49/19	00	07	24
		52/34	00	00	68
		52/38	00	00	58
		52/33	00	00	24
		52/30	00	00	41
		52/27	00	00	27
		52/28	00	00	29
		52/11	00	00	19
		52/9	00	00	43
		52/10	00	00	57
		54/3	00	00	51
		45/11	00	00	11
		45/4	00	00	19
		37/35	00	01	33

(1)	(2)	(3)	(4)	(5)	(6)
		5/4	00	00	10
		4/15	00	00	13
		4/14	00	01	39
		4/22	00	02	96
		37/36	00	01	72

SCHEDULE					
DISTRICT : SRIKAKULAM			STATE : ANDHRA PRADESH		
MANDAL	VILLAGE	SURVEY NO.	AREA		
			Hectare	Are	Sq. Mt.
(1)	(2)	(3)	(4)	(5)	(6)
PONDURU	TOLAPI	95/2	00	00	41
LAVERU	ADAPAKA	51/1	00	04	05
		111/15	00	01	32
		113/12	00	00	31
		67/19	00	01	02
		67/23	00	02	03
		111/8	00	04	45

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

नई दिल्ली, 18 जून, 2019

का. आ.1072.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 उप धारा (1) के अधीन जारी की गई, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना का.आ. 1144 तारीख 26.07.2018 जिसका प्रकाशन भारत के राजपत्र संख्या 30, भाग II, खण्ड 3, उप खण्ड (ii) तारीख 29.07.2018 से 04.08.2018 का.आ. 1357 तारीख 05.09.2018 जिसका प्रकाशन भारत के राजपत्र संख्या 36, भाग II, खण्ड 3, उप खण्ड (ii) तारीख 09.09.2018 से 15.09.2018 में किया गया है। इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट आंध्र प्रदेश राज्य के जिला विशाखापटनम के मंडल : मुनगापाका, एस. रायवरम, नक्कापल्लि और पायाकरावुपेटा की भूमि में, ओडीशा राज्य में पारादीप से तेलंगाना राज्य में हैदराबाद तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा क्रियान्वित किए जा रहे "पारादीप-हैदराबाद पाइपलाइन परियोजना" के संबंध में पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी:

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को उपलब्ध करा दी गई थीं। और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी नें केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है:

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद् द्वारा घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूचि में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाए:

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए सभी बिल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

जिला : विशाखापटनम		**राज्य : आँध्र प्रदेश**			
मंडल का नाम	**ग्राम का नाम**	**सर्वे नम्बर**	**क्षेत्रफल**		
			हेक्टेयर	**एयर**	**वर्गमीटर**

(1)	(2)	(3)	(4)	(5)	(6)
मुनगापाका	टी.सिरसपल्ली	50	00	30	25
		52	00	01	40
		76	00	29	21
		75	00	17	95
		78	00	03	97
		79	00	00	57
मुनगापाका	काकरपल्ली	184	00	35	55
		186	00	00	49
		185	00	79	97
		192	00	13	84
		194	00	07	59
		193	00	29	58
		198	00	13	96
		197	00	15	92
		204	00	46	57
		206	00	44	26
		210	00	20	52
		211	00	40	87
मुनगापाका	नागावरम	206	00	23	21
मुनगापाका	नागावरम	351	00	34	75
एस.रायवरम	पेनुगोल्लु	299	00	00	10
नक्कापल्लि	गोड़िचरला	337	00	89	17

(1)	(2)	(3)	(4)	(5)	(6)
		336	00	18	09
		335	00	06	44
		365	00	13	28
		364	00	12	39
		366	00	00	37
		367	00	19	70
		360	00	06	43
		361	00	35	45
		368	00	15	04
		357	00	20	42
		356	00	13	63
		374	00	01	62
		375	00	11	93
		376	00	28	07
		377	00	04	84
		318	00	06	30
		317	00	28	09
		316	00	50	01
		313	00	21	24
		310	00	01	67
		314	00	00	19
		311	00	00	10
		312	00	00	10
नक्कापल्लि	उद्दंडापुरम	18	00	19	45
		19	00	10	76
		17	00	04	40
		16	00	21	57
		8	00	39	80
		7	00	15	79
		6	00	09	64
		5	00	22	82
		4	00	15	88
		3	00	14	41

(1)	(2)	(3)	(4)	(5)	(6)
पायाकरावुपेटा	अरटलाकोटा	92/3	00	09	63
		107	00	19	95
		92/4	00	16	16

[फा. सं. आर-11025(11)252/2017-ओआर-I/ई-21033]

शान्तनु धर, अवर सचिव

New Delhi, the 18th June, 2019

S.O.1072.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India No.30 Part-II, Section 3, Sub-section (ii) dated 29.07.2018 to 04.08.2018 vide S.O.No. 1144 dated 26.07.2018 and No.36 Part-II, Section 3, Sub-section (ii) dated 09.09.2018 to 15.09.2018 vide S.O.No. 1357 dated 05.09.2018 issued under Sub-section (1) of Section 3 of the Petroleum and Minerals pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the land situated in Mandal: Munagapaka, S.Rayavaram, Nakkapalli and Payakaraopeta of Visakhapatnam District in Andhra Pradesh State, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of petroleum products from Paradip in the State of Odisha to Hyderabad in the State of Telangana by the Indian Oil Corporation Limited for implementing the "Paradip–Hyderabad Pipeline Project".

And whereas the copies of the Gazette were made available to the public. And whereas the Competent Authority has under Sub-section (1) of Section 6 of the said Act, has submitted his report of Central Government.

And whereas, the Central Government after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of the user therein;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user of the said land for laying the pipeline shall, instead of vesting in the Central Government, vests on the date of publication of the declaration, in India Oil Corporation Limited, free from all encumbrances.

SCHEDULE

DISTRICT : VISAKHAPATNAM **STATE : ANDHRA PRADESH**

MANDAL	VILLAGE	SURVEY NO.	AREA		
			Hectare	Are	Sq. Mt.
(1)	(2)	(3)	(4)	(5)	(6)
MUNAGAPAKA	T.SIRASAPALLI	50	00	30	25
		52	00	01	40
		76	00	29	21
		75	00	17	95
		78	00	03	97
		79	00	00	57
MUNAGAPAKA	KAKARAPALLI	184	00	35	55
		186	00	00	49
		185	00	79	97
		192	00	13	84
		194	00	07	59
		193	00	29	58
		198	00	13	96

(1)	(2)	(3)	(4)	(5)	(6)
		197	00	15	92
		204	00	46	57
		206	00	44	26
		210	00	20	52
		211	00	40	87
MUNAGAPAKA	NAGAVARAM	206	00	23	21
MUNAGAPAKA	NAGAVARAM	351	00	34	75
S.RAYAVARAM	PENUGOLLU	299	00	00	10
NAKKAPALLI	GODICHERLA	337	00	89	17
		336	00	18	09
		335	00	06	44
		365	00	13	28
		364	00	12	39
		366	00	00	37
		367	00	19	70
		360	00	06	43
		361	00	35	45
		368	00	15	04
		357	00	20	42
		356	00	13	63
		374	00	01	62
		375	00	11	93
		376	00	28	07
		377	00	04	84
		318	00	06	30
		317	00	28	09
		316	00	50	01
		313	00	21	24
		310	00	01	67
		314	00	00	19
		311	00	00	10
		312	00	00	10
NAKKAPALLI	UDDANDAPURAM	18	00	19	45
		19	00	10	76
		17	00	04	40
		16	00	21	57
		8	00	39	80
		7	00	15	79
		6	00	09	64
		5	00	22	82
		4	00	15	88
		3	00	14	41
PAYAKARAOPETA	ARATLAKOTA	92/3	00	09	63
		107	00	19	95
		92/4	00	16	16

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

नई दिल्ली, 18 जून, 2019

का.आ.1073.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि लोक हित में यह आवश्यक है कि आंध्र प्रदेश राज्य में पेट्रोलियम उत्पादों के परिवहन के लिए पारादीप-हैदराबाद पाइपलाइन परियोजना के क्रियान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमी में जो इस से ऊपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई भी व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस (21) दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री बी. वेंकटेशु, सक्षम प्राधिकारी (आंध्र प्रदेश), इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन्स प्रभाग), पारादीप-हैदराबाद पाइपलाइन परियोजना,चौथी मंजिल, एल.आई.सी. एनेक्सी भवन, थिक्कना (डायमंड पार्क) रोड़, आर.टी.सी. कॉम्पलेक्स के पास, विशाखापटनम - 530004,आंध्र प्रदेश राज्य को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

जिला : विशाखापटनम		**राज्य : आँध्र प्रदेश**			
मंडल का नाम	**ग्राम का नाम**	**सर्वे नम्बर**	**क्षेत्रफल**		
			हेक्टेयर	**एयर**	**वर्गमीटर**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
नक्कापल्लि	चिनारामाभद्रापुरम	146	00	00	36
		149	00	04	35
नक्कापल्लि	बोडुगल्लम	163/8	00	00	04
		163/9	00	00	66
		163/10	00	00	36
		163/16	00	00	16
		153/15	00	00	07
		154/3	00	00	15
		154/5	00	00	45
		146/22	00	00	50
		145/16	00	00	79
		145/9	00	00	28
		130/1A	00	00	09
		130/1H	00	00	57
		130/2D	00	00	59

(1)	(2)	(3)	(4)	(5)	(6)
		131/4D	00	01	22
		133/1	00	02	20
		133/2	00	02	61
		133/3	00	01	73
		133/5	00	00	84
		132/13	00	01	66
		132/11	00	02	07
		103/2	00	01	94
		134/6C	00	00	21

[फा. सं. आर-11025(11)252/2017-ओआर-I/ई-21033]

शान्तनु धर, अवर सचिव

New Delhi, the 18th June, 2019

S.O.1073.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum products in the state of Andhra Pradesh a pipeline should be laid for implementing Paradip-Hyderabad Pipeline Project under Paradip-Hyderabad Pipeline by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub Section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri. B.Venkatesu, Competent Authority (Andhra Pradesh) Indian Oil Corporation Limited (Pipelines Division), Paradip Hyderabad Pipeline Project, 4th floor, LIC Annexe Building, Thikkana (Diamond Park) Road, Near RTC Complex, Visakhapatnam - 530004 within twenty one (21) days from the date on which the copies of this notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE

DISTRICT : VISAKHAPATNAM			**STATE : ANDHRA PRADESH**		
MANDAL	**VILLAGE**	**SURVEY NO.**	**AREA**		
			Hectare	**Are**	**Sq. Mt.**

(1)	(2)	(3)	(4)	(5)	(6)
NAKKAPALLI	CHINARAMABHADRAPURAM	146	00	00	36
		149	00	04	35
NAKKAPALLI	BODUGALLAM	163/8	00	00	04
		163/9	00	00	66
		163/10	00	00	36
		163/16	00	00	16
		153/15	00	00	07

154/3	00	00	15
154/5	00	00	45
146/22	00	00	50
145/16	00	00	79
145/9	00	00	28
130/1A	00	00	09
130/1H	00	00	57
130/2D	00	00	59
131/4D	00	01	22
133/1	00	02	20
133/2	00	02	61
133/3	00	01	73
133/5	00	00	84
132/13	00	01	66
132/11	00	02	07
103/2	00	01	94
134/6C	00	00	21

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

नई दिल्ली, 18 जून, 2019

का.आ.1074.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि लोक हित में यह आवश्यक है कि आंध्र प्रदेश राज्य में पेट्रोलियम उत्पादों के परिवहन के लिए पारादीप-हैदराबाद पाइपलाइन परियोजना के क्रियान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमी में जो इस से ऊपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई भी व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस (21) दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री बी. वेंकटेशु, सक्षम प्राधिकारी (आंध्र प्रदेश), इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन्स प्रभाग), पारादीप-हैदराबाद पाइपलाइन परियोजना, चौथी मंजिल, एल.आई.सी. एनेक्सी भवन, थिक्कना (डायमंड पार्क) रोड़, आर.टी.सी. कॉम्पलेक्स के पास, विशाखापटनम – 530004 ,आंध्र प्रदेश राज्य को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

जिला : विशाखापटनम **राज्य : आँध्र प्रदेश**

मंडल का नाम	ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल		
			हेक्टेयर	एयर	वर्गमीटर
(1)	(2)	(3)	(4)	(5)	(6)
पायाकरावुपेटा	अरटलाकोटा	151/7A	00	00	03
		151/4	00	00	55
		151/3B	00	00	09
		142/5	00	01	64
		142/4B	00	05	82
		107	00	00	29
		92/3	00	01	30
		85/1	00	01	25
		40/2	00	01	29
		40/5C	00	01	16
		40/6B	00	00	50
		46/1	00	00	80
		45/25	00	00	29
		45/26	00	00	42
		45/27	00	00	71
		49	00	01	41
पायाकरावुपेटा	पेदारामाभद्रापुरम	8/7	00	00	64
		7/2	00	02	66
		18	00	03	24
		29/4	00	01	19
		29/5	00	01	29
		27/5	00	00	17
		27/2	00	00	71
		108/2	00	01	01
		109/2	00	02	01
		111/2	00	00	03
		115/1	00	00	68
		120/2	00	04	33
		122/1	00	03	38
पायाकरावुपेटा	पायाकरावुपेटा	221/3	00	12	41
		221/4	00	01	11

		222/5	00	00	71
		220/4	00	02	33

[फा. सं. आर-11025(11)252/2017-ओ आर-I/ई-21033]

शान्तनु धर, अवर सचिव

New Delhi, the 18th June, 2019

S.O.1074.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum products in the state of Andhra Pradesh a pipeline should be laid for implementing Paradip-Hyderabad Pipeline Project under Paradip-Hyderabad Pipeline by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub Section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri. B.Venkatesu, Competent Authority (Andhra Pradesh) Indian Oil Corporation Limited (Pipelines Division), Paradip Hyderabad Pipeline Project, 4th floor, LIC Annexe Building, Thikkana (Diamond Park) Road, Near RTC Complex, Visakhapatnam - 530004 within twenty one (21) days from the date on which the copies of this notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE

DISTRICT : VISAKHAPATNAM			**STATE : ANDHRA PRADESH**		
MANDAL	**VILLAGE**	**SURVEY NO.**	**AREA**		
			Hectare	**Are**	**Sq. Mt.**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
PAYAKARAOPETA	ARATLAKOTA	151/7A	00	00	03
		151/4	00	00	55
		151/3B	00	00	09
		142/5	00	01	64
		142/4B	00	05	82
		107	00	00	29
		92/3	00	01	30
		85/1	00	01	25
		40/2	00	01	29
		40/5C	00	01	16
		40/6B	00	00	50
		46/1	00	00	80
		45/25	00	00	29
		45/26	00	00	42
		45/27	00	00	71
		49	00	01	41
PAYAKARAOPETA	PEDARAMABHADRAPURAM	8/7	00	00	64
		7/2	00	02	66

(1)	(2)	(3)	(4)	(5)	(6)
		18	00	03	24
		29/4	00	01	19
		29/5	00	01	29
		27/5	00	00	17
		27/2	00	00	71
		108/2	00	01	01
		109/2	00	02	01
		111/2	00	00	03
		115/1	00	00	68
		120/2	00	04	33
		122/1	00	03	38
PAYAKARAOPETA	PAYAKARAOPETA	221/3	00	12	41
		221/4	00	01	11
		222/5	00	00	71
		220/4	00	02	33

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

नई दिल्ली, 18 जून, 2019

का.आ.1075.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि लोक हित में यह आवश्यक है कि आंध्र प्रदेश राज्य में पेट्रोलियम उत्पादों के परिवहन के लिए पारादीप-हैदराबाद पाइपलाइन परियोजना के क्रियान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में जो इस से ऊपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई भी व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस (21) दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री के. ए. एस जेन्निसन, सक्षम प्राधिकारी (आंध्र प्रदेश), इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन प्रभाग), पारादीप-हैदराबाद पाइपलाइन परियोजना, प्लॉटसंख्या 33, कनका दुर्गा ऑफिसर कॉलोनी, गुरुनानक नगर मेन रोड विजयवाड़ा-520008, आंध्र प्रदेश राज्य को लिखित रूप से आक्षेप भेज सकेगा|

अनुसूची					
जिला: वेस्ट गोदावरी			राज्य: आन्ध्र प्रदेश		
			क्षेत्रफल		
मंडल का नाम	ग्राम का नाम	सर्वे नम्बर	हेक्टेयर	एयर	वर्ग मीटर
(1)	(2)	(3)	(4)	(5)	(6)
चिंतलापूड़ी	प्रगड़ावरम	1281/3	00	09	36
		248/2	00	16	19
		224/1	00	14	57
		217/2A	00	09	71
		210/6	00	17	00
		159	00	30	76
टी. नरसापुरम	कृष्णारावुपालेम	4	00	65	57

[फा. सं. आर-11025(11)252/2017-ओ आर-I/ई-21033]

शान्तनु धर, अवर सचिव

New Delhi, the 18th June, 2019

S.O.1075.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum products in the state of Andhra Pradesh a pipeline should be laid for implementing Paradip-Hyderabad Pipeline Project under Paradip-Hyderabad Pipeline by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, who is interested in the land described in the said schedule, may submit objection in writing to Shri. K.A.S Jennyson, Competent Authority (Andhra Pradesh), Indian Oil Corporation Limited (Pipelines Division), Paradip Hyderabad Pipeline Project, Plot No. 33, Kanaka Durga officer's Colony, Gurunanak Nagar Main Road, Vijayawada - 520008 within twenty one (21) days from the date on which the copies of this notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE					
District : West Godavari			State : Andhra Pradesh		
			Area		
Name of Mandal	Name of Village	Survey No.	Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)	(6)
Chintalapudi	Pragadavaram	1281/3	00	09	36
		248/2	00	16	19
		224/1	00	14	57
		217/2A	00	09	71
		210/6	00	17	00
		159	00	30	76
T Narsapuarm	Krishnaraopalem	4	00	65	57

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

नई दिल्ली, 18 जून, 2019

का.आ.1076.—केंद्रीय सरकार को ऐसा प्रतीत होता है कि लोक हित में यह आवश्यक है कि आंध्र प्रदेश राज्य में पेट्रोलियम उत्पादों के परिवहन के लिए पारादीप- हैदराबाद पाइपलाइन परियोजना के क्रियान्वयन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में जो इस से ऊपाबद्ध अनुसूची में वर्णित है, और जिसमें उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई भी व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको इस अधिसूचना में युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस (21) दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के संबन्ध में श्री बी. वेंकटेशु, सक्षम प्राधिकारी (आंध्र प्रदेश), इंडियन ऑयल कॉर्पोरेशन लिमिटेड (पाइपलाइन्स प्रभाग), पारादीप-हैदराबाद पाइपलाइन परियोजना, चौथी मंजिल, एल.आई.सी. एनेक्सी भवन, थिक्कना (डायमंड पार्क) रोड़, आर.टी.सी. कॉम्पलेक्स के पास, विशाखापटनम - 530004,आंध्र प्रदेश राज्य को लिखित रूप से आक्षेप भेज सकेगा।

अनुसूची

जिला : विशाखापटनम		**राज्य आँध्र प्रदेश :**			
मंडल का नाम	**ग्राम का नाम**	**सर्वे नम्बर**	**क्षेत्रफल**		
			हेक्टेयर	**एयर**	**वर्गमीटर**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
एसरायवरम	चिनागुम्मुलूरु	363/1	00	00	76
		360/8	00	01	19
		360/7	00	00	85
		318	00	05	39
		302/5	00	10	09
		303/4	00	00	47
		303/1	00	00	53
		303/2	00	00	98
		298/12	00	00	61
		298/11	00	00	41
		298/5	00	00	67
		298/3	00	01	45
		295/15	00	00	15
		295/8	00	00	77
		295/5	00	00	18
		296/1	00	00	02

(1)	(2)	(3)	(4)	(5)	(6)
		293/4	00	00	73
		278/6	00	01	50
		278/9	00	02	59
		275/1	00	00	05
		274/5	00	06	45
		274/3	00	02	51
एसरायवरम	पेदागुम्मालूरु	296	00	00	17
		292	00	09	64
		291	00	00	82
		59/1	00	01	15
		59/2	00	00	61
		56/3	00	00	41
		48/13	00	00	05
		48/12	00	00	47
		48/6	00	00	17
		48/7	00	01	87
		48/11	00	00	17
		45/10	00	00	78
		32/18	00	00	11
		32/15	00	00	57
		32/5	00	00	04
		32/6	00	00	05
		32/1	00	00	02
		22/5	00	01	74
		22/6	00	00	02
		21/4	00	03	65
		21/1	00	01	39
		2/4	00	02	42
		2/3	00	08	06
		4/3	00	00	12
		4/2	00	00	06
एसरायवरम	पेट्टुगोल्लापल्लि	125/7	00	00	31
		126/3	00	02	11
		129/2	00	00	04
		129/8	00	00	10

(1)	(2)	(3)	(4)	(5)	(6)
		130/11	00	00	03
		130/14	00	00	13
एसरायवरम	भिमावरम	423	00	00	10
		403	00	20	30
		379	00	00	15
एसरायवरम	पेटासूदिपुरम्	48	00	02	43
		113	00	00	21
		121/2	00	06	38
		325/2B	00	00	61
एसरायवरम	वेमागिरि	138	00	00	51
		126	00	00	41
		43/1	00	00	21
		144	00	02	84

[फा. सं. आर-11025(11)252/2017-ओ आर-I/ई-21033]

शान्तनु धर, अवर सचिव

New Delhi, the 18th June, 2019

S.O.1076.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of petroleum products in the state of Andhra Pradesh a pipeline should be laid for implementing Paradip-Hyderabad Pipeline Project under Paradip-Hyderabad Pipeline by the Indian Oil Corporation Limited;

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by Sub Section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person who is interested in the land described in the said schedule, may submit objection in writing to Shri. B.Venkatesu, Competent Authority (Andhra Pradesh) Indian Oil Corporation Limited (Pipelines Division), Paradip Hyderabad Pipeline Project, 4th floor, LIC Annexe Building, Thikkana (Diamond Park) Road, Near RTC Complex, Visakhapatnam - 530004 within twenty one (21) days from the date on which the copies of this notification issued under Sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public.

SCHEDULE

DISTRICT : VISAKHAPATNAM **STATE : ANDHRA PRADESH**

MANDAL	VILLAGE	SURVEY NO.	AREA		
			Hectare	Are	Sq. Mt.

(1)	(2)	(3)	(4)	(5)	(6)
S.RAYAVARAM	CHINAGUMMULURU	363/1	00	00	76
		360/8	00	01	19
		360/7	00	00	85
		318	00	05	39
		302/5	00	10	09
		303/4	00	00	47
		303/1	00	00	53
		303/2	00	00	98
		298/12	00	00	61

(1)	(2)	(3)	(4)	(5)	(6)
		298/11	00	00	41
		298/5	00	00	67
		298/3	00	01	45
		295/15	00	00	15
		295/8	00	00	77
		295/5	00	00	18
		296/1	00	00	02
		293/4	00	00	73
		278/6	00	01	50
		278/9	00	02	59
		275/1	00	00	05
		274/5	00	06	45
		274/3	00	02	51
S.RAYAVARAM	PEDAGUMMALORU	296	00	00	17
		292	00	09	64
		291	00	00	82
		59/1	00	01	15
		59/2	00	00	61
		56/3	00	00	41
		48/13	00	00	05
		48/12	00	00	47
		48/6	00	00	17
		48/7	00	01	87
		48/11	00	00	17
		45/10	00	00	78
		32/18	00	00	11
		32/15	00	00	57
		32/5	00	00	04
		32/6	00	00	05
		32/1	00	00	02
		22/5	00	01	74
		22/6	00	00	02
		21/4	00	03	65
		21/1	00	01	39
		2/4	00	02	42
		2/3	00	08	06
		4/3	00	00	12
		4/2	00	00	06
S.RAYAVARAM	PETTUGOLLAPALLI	125/7	00	00	31
		126/3	00	02	11
		129/2	00	00	04
		129/8	00	00	10
		130/11	00	00	03
		130/14	00	00	13
S.RAYAVARAM	BHIMAVARAM	423	00	00	10
		403	00	20	30
		379	00	00	15
S.RAYAVARAM	PETASUDIPURAM	48	00	02	43
		113	00	00	21
		121/2	00	06	38
		325/2B	00	00	61
S.RAYAVARAM	VEMAGIRI	138	00	00	51
		126	00	00	41
		43/1	00	00	21
		144	00	02	84

[F. No. R-11025(11)252/2017-OR-I/E-21033]

SANTANU DHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 मई, 2019

का.आ.1077.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महासचिव, भारत सरकार प्रिंटिंग प्रेस, सैफाबाद, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, 1 हैदराबाद,के पंचाट (संदर्भ संख्या 84/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.01.19 को प्राप्त हुए थे ।

[सं. एल-16011/01/2013- आईआर (डीयू)]

वी. के . ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th May, 2019

S.O.1077.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2013) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Secretary, Government of India Security Printing Press, Saifabad, Hyderabad and Others, and their workmen which were received by the Central Government on 23.01.19.

[No. L-16011/01/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2018

INDUSTRIAL DISPUTE No. 84/2013

Between:

The General Secretary,
Government of India Security Printing Press,
Employees Union, Mint Compound,
Saifabad,
Hyderabad – 500 004. …Petitioner

AND

The General Manager,
Government of India Security Printing Press,
Mint Compound, Saifabad,
Hyderabad – 500 004. … Respondent

Appearances:

For the Petitioner : M/s. V. Govinda Raju & A.V. Rama Rao, Advocates

For the Respondent : Sri P. Bhakthavatsal, Advocate

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L- 16011/01/2013 –IR(DU) dated 11.7.2013 whereunder this Tribunal is required to adjudicate the dispute i.e.,

"Whether the action of the Management of Security Printing Press, Hyderabad in denying the benefits of payment of Enhanced Special Allowance to the Govt. Optees is justified? What relief the workmen of Govt. Optees are entitled to?''

After receiving the above said reference, it was registered as ID No. 84/2013 in this Tribunal and notices were issued to both the parties and procured their presence.

2. The case is posted for filing of counter and documents by the Respondent management. At such stage, the General Secretary of the Petitioners' Union filed an application to withdraw the present case and accordingly, the copy of the application was served to the Respondent.

3. In view of the application filed by the General Secretary of the Petitioner Union and at the consent of the Respondent, the application is accepted and the case is allowed to be withdrawn by the Petitioner Union.

The reference is answered accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 20th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 जून, 2019

का.आ.1078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी अभियंता, सीपीडब्ल्यूडी, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली, के पंचाट (संदर्भ संख्या 59/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/25/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1078.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer, CPWD, Dehradun & Others, and their workmen which were received by the Central Government on 09.05.2019.

[No. L-42011/25/2011-IR (DU)]

V. K . THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 59/2011

Date of Passing Award- 26th March, 2019.

Between:

Shri Prem Shankar Saxena,
All India CPWD (MRM) Karamchari Sangathan,
House No. 4823, Gali No. 13,
Balbir Nagar Extension,
Shahdra, New Delhi- 110032. … Workman

Versus

The Executive Engineer,
CPWD,
DCD-I, 20, Subhash Road,
Dehradun … Management

Appearances:-

Shri Satish Kumar Sharma, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of CPWD, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/25/2011(IR(DU) dated 06.09.2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of CPWD, in denying benefits of second ACP, in-situ promotion and other consequential benefits to Shri Badri Prasad, Beldar, is legal and justified ? what relief the workman is entitled to?"

Being noticed the workman appeared and filed the claim statement stating therein that he was initially appointed as Beldar in the year 1969 and superannuated from service on 31.01.2006 while serving on the same post. During his tenure of his service he reached the maximum of the pay scale i.e. Rs. 750/- to 950/- in the year 1990. As per the order of the DGW and CPWD the management granted him in-situ promotion w.e.f. 01.04.1991 in the pay scale of 850/- to 1150/- by order dated 14.03.1996 but suddenly after his superannuation on 31.01.2006 by an arbitrary order dated 19.09.2006 the in-situ promotion granted to him was withdrawn and his pay was revised unilaterally to his prejudice. The Government of India introduced the ACP scheme w.e.f. 09.08.1999 and the workman was granted first ACP on completion of 12 years of services raising his pay to 2650/- to 4000/-. Again on completion of 24 years second ACP was allowed w.e.f. 9.8.1999. Though the workman as per the Government notification was entitled to in-situ promotion to a higher pay scale before announcement of ACP the same was not considered. Before announcement of ACP by the order of DGW and CPWD dated 07.05.1997 the Assistant categories of work charged employees of CPWD merged with the main category and classified as skilled workers allowing higher pay scale notionally w.e.f. 01.01.73 but the arrears were paid w.e.f. 01.04.81. Since the Assistant category of Work Charged employee was abolished w.e.f. 01.01.73, the promotional scale of unskilled category automatically converted to skilled category instead of semi skilled category. Accordingly the department issued orders dated 29.06.2009 and 27.01.2010 asking the departments about the additional fund requirement. This workman was neither granted highers pay scale in the semi skilled category or in the skilled category after withdrawal of the in-situ promotion order on 19.09.2006. The action of the management being prejudicial the workman has prayed for an award to be passed directing the management to provide him in-situ promotion pay scale w.e.f. 01.04.1991 with all consequential benefits or to set aside the order dated 19.09.2006 withdrawing the in-situ promotion alongwith to consequential benefits.

The management appeared and filed written statement denying the stand taken by the workman. The contention raised by the management is that this proceeding is not maintainable since there exist no Industrial Dispute between the parties. The further contention of the management is that the claimant was initially appointed as Beldar in the pay scale of Rs. 180-290/-. At the time of initial appointment he was an unskilled worker. He was confirmed in the post of Beldar on 01.04.77 and was allowed revision of pay scale as and when applicable as decided by the government. He also attained the maximum of the pay scale of 750 to 940/- in the year 1991. After stagnation he was also given increment as maximum permissible. On 14.03.1996 he was given in-situ promotion w.e.f. 01.04.1991 in the pay scale of Rs. 800/- to 1150/- . Later on the department issued a clarification that the in-situ promotion would be admissible upto 08.09.1999 i.e. till the date of introduction of ACP. To get the ACP the candidate has to qualify in the trade test. Since the workman could not qualify the trade test he was not given the ACP. Though 1st and 2nd ACP after completion of 12 and 24 years was allowed to him, raising his pay to Rs. 3050-4590/- and 4000-6000/- respectively. When 6th pay commission report was implemented his pay was fixed in the scale of 5200-20200/- w.e.f. 01.01.2006 on the option exercised by him. Subsequently it came to notice that the 2nd ACP was allowed to the workman by mistake though he had not qualified for the second Trade Test. Thus, by order dated 19.09.2006 the ACP was withdrawn and his pay scale was revised. Thereby management has stated that the relief claimed by the workman is not tenable in the eye of law.

On this rival pleading following issues are framed for adjudication.

1. Whether the action of the management of CPWD, in denying benefits of second ACP, in-situ promotion and other consequential benefits to Shri Badri Prasad, Beldar, is legal and justified? If so its effect?

2. Whether the relationship of employer and employee exists between management and workman? If so its effect?

3. What relief the workman is entitled to?

During course of hearing the workman examined himself as WW1 and exhibited the documents marked in a series of WW1/1 to WW1/5 he also exhibited the documents like the memorandum of settlement between the management and CPWD Mazdoor Union as WW1/1. WW1/2 is Gazette Notification of the arbitration award WW1/3 is the judgment of the Hon'ble High Court of Delhi in which the Hon'ble High Court direct payment of arrears for 01.04.81 to the persons getting in-situ promotion. In addition to that the workman has also produced photocopies of the office order recalling his pay scale withdrawing in-situ promotion the clarification given by the department regarding the Trade Test to qualify for the ACP and the office memorandum notifying merger of assistance in the category of skilled workman etc.

The management examined its Executive Engineer as MW1 and proved the series of documents including the gazette notification. It also proved the memorandum of the Ministry of Finance for grant of ACP to Group C and Group D and the order granting ACP to the workman.

FINDINGS

ISSUE No.1

Admitted facts are that the workman was initially appointed as Beldar and he was made permanent in the post of Beldar on 01.04.1977. It is also not disputed that he was granted in-situ promotion w.e.f. 01.04.1991 in the pay scale of 800-1150/- and the actual order was passed on 14.03.1996. It is also not disputed that the in-situ promotion was allowed upto the time just before introduction of ACP. The other admitted fact is that the workman had reached the maximum scale of unskilled category i.e. 750 to 950/-. By filing the order of the CPWD dated 07.05.1997 marked as Exhibit WW1/5 the workman has stated that the government took a decision for merging Assistant categories of work charged employees with the corresponding main category and reclassifying them as skilled workman. Thus, after such merger all the promotions applicable to the skilled workman automatically became applicable to the semi skilled persons reclassified as skilled workman. The said order since directed that after the merger the pay scale of each worker in pre-revised scale will be fixed on 01.01.73 or on the date of merger whichever is later and again on o1.01.86 in the new scale as per the 4th pay commission, accordingly the pay scale of claimant was revised. There was no anomaly in the said pay fixation but the management acted arbitrarily in withdrawing the pay scale and in-situ promotion allowed to him.

It is the further contention of the workman that on account of that in-situ promotion he was never promoted to the next higher category and the 1st and 2nd ACP was correctly allowed to him. To support his contention he has relied upon the judgment of Hon'ble High Court of Punjab and Haryana in the case of **Union of India and Others vs. Raj Pal and Others decided in CWP No. 19387 of 2011**. It is also the contention of the workman that the said judgment of the Hon'ble High Court was followed by the Hon'ble CAT Principal Bench Delhi and upheld by the Hon'ble Supreme Court in SLP (CC NO. 7467 of 2013).

The witness examined on behalf of the management while admitting about the circular of DOPT regarding grant of ACP stated that the department had issued an order for grant of the pay scale of 850 to 1150/- to unskilled workers w.e.f. 01.04.1991. There is no dispute that the cadre of semi skilled worker merged with the skilled workers w.e.f. 01.01.73 as per the arbitration award of 1988. This was the award passed prior to the order issued by the DOPT on 13.09.1991

directing grant of in-situ promotion w.e.f. 01.01.73. Thus, it is found that the order of the management for grant of in-situ promotion to the workman and the others in the scale of 850 to 1150/- was not proper.

The contention of the management that for not qualifying the trade test the workman is not entitled to ACP is found, not based on record though the witness examined on behalf of the management during cross-examination though stated that for grant of 1sst and 2nd ACP the workman had to qualify in 2 skill test and since it is fail to do so the ACP granted earlier by mistake was correctly withdrawn. This statement of witness not based upon facts since the documents filed by the management and marked as MW1/2 clearly shows that the in-situ promotion in the scale of 950 to 1500 which was a promotional scale was allowed to all semi skilled category renamed as skilled workers after the merger. There was no requirement like skill test for such benefits. Thus, it is held that the present workman on account of merger was entitled to in-situ promotion w.e.f. 01.04.1991 and his ACP should have been accordingly determined. The decision of the management for withdrawing the in-situ promotional scale and revising the ACP granted to him is held to be illegal. This issue is accordingly answered in favour of the workman.

ISSUE NO.2

The workman is held entitled to promotional scale of 950 to 1500/- w.e.f. 01.04.91 under in-situ promotion and the same shall be taken into consideration for re-fixation of his pay in 1st ACP as a consequence thereof. Hence, ordered.

ORDER

The claim be and the same is answered in favour of the workman. It is directed that the management shall refix the salary of the workman in the pay scale of 950 to 1500/- w.e.f. 01.04.1991 in, in-situ promotion. In view of this direction the ACP to be allowed to the workman shall be accordingly revised. The pay on such fixation and differential arrear shall be paid to the workman by the management within 3 months from the date when this award would become enforceable failing which the workman would be at liberty of getting the order executed and on such event the management will be liable to pay the interest at the rate of 12% per Annum from the date when the amount becomes payable. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ.1079.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स डिवीजनल इंजीनियर टेलीकॉम, अहमदाबाद (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 अहमदाबाद, के पंचाट (संदर्भ संख्या 1151/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.19 को प्राप्त हुए थे।

[सं.एल-40012/73/1998-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O.1079.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1151/2004) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Divisional Engineer Telecom, Ahmedabad (Gujarat) and Others, and their workmen which were received by the Central Government on 22.05.19.

[No. L-40012/73/1998-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,
Dated 02nd May, 2019

Reference: (CGITA) No. 1151/2004

The Divisional Engineer Telecom,
Optical Fibre (P) Dn. I,
3rd Floor, Microwave Bldg., Navrangpura,
Ahmedabad (Gujarat) – 380001 …First Party

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex, Office No. 213, 2nd Floor,
Near Chaudhary High School,
Rajkot (Gujarat) - 360001 …Second Party

For the First Party : Shri N.K. Trivedi
For the Second Party : Shri M.H. Sanghariyat

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/73/98–IR(DU) dated 18.02.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of D.E.T., Ahmedabad Telephones, Ahmedabad in terminating the services of Shri A.K. Vankar on 01.08.1985 is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 18.02.1999 and received on 08.03.1999 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, the second party union submitted the statement of claim on 16.08.1999 and the first party submitted the written statement on 25.04.2000.

3. The second party union has alleged that the second party workman was initially engaged as casual labour by the Divisional Engineer Telecom, Optical Fibre (P) Dn. I, 3rd Floor, Microwave Bldg., Navrangpura, Ahmedabad, hereinafter referred to as 'first party' on 01.07.1983 and he was allowed to work till 01.08.1985 the date on which his services were terminated orally. His details of working days are as under:

From	To	Book No./MR No.	Total Days	Worked under
01.07.1983	31.08.1983	59-22	62	DET Coaxial Cable Project, Ahmedabad
01.09.1983	30.11.1983	26	91	- Do -
01.12.1983	29.02.1984	11, 22-2	91	- Do -
01.03.1984	31.05.1984	21-23-9-8	92	- Do -
01.06.1984	31.07.1984	13-22-25	61	- Do -
01.08.1984	01.09.1984	107	61	- Do -
01.11.1984	31.01.1985	164-168	92	- Do -
01.02.1985	30.04.1985	168-172-2	89	- Do -
01.05.1985	31.08.1985	177-314	123	- Do -

Thus he has worked for more than 240 days in preceding calendar year but his services were terminated retaining the junior casual labours, thus in violation of Section 25 F, G and H of the Industrial Disputes Act. Thus he has prayed for reinstatement with back wages.

4. The first party in his written statement denied the averments made in the statement of claim submitted that the workman was engaged purely on daily and temporary basis as causal labour. He did not work for more than 240 days in the preceding calendar year. He left service on 01.08.1985 out of his own will. Therefore, there was no violation of Section 25 F, G and H of the Industrial Disputes Act.

5. The workman has submitted the documents vide list Ex. 24.

6. On the basis of the pleadings, the following issues arise:

i. Whether the action of the management of D.E.T., Ahmedabad Telephones, Ahmedabad in terminating the services of Shri A.K. Vankar on 01.08.1985 is legal and justified?

ii. To what relief, if any, the workman is entitled?

7. **Issue No. i and ii:** As all the issues are interrelated, therefore, are decided together. The burden of proof of these issues lies on the second party workman who submitted his affidavit reiterating the averments made in the statement of claim. In his cross-examination, he has stated that he was engaged as daily wager from 01.07.1983 to 31.08.1985. He did work for more than 240 days in every calendar year. He never applied for regularisation in the department but he never left the job out of his own will. No daily wager junior to him was retained. He is still unemployed having with a liability of 7 family members.

8. The first party has not lead any evidence and failed to prove that the second party workman never worked for 240 days in preceding calendar year.

9. It is noteworthy that the first party has failed to prove that the workman left the employment out of his own will but the workman was retrenched on 31.08.1985 and raised the dispute after 19 years in the year 2004, therefore, it would be appropriate to award a lump-sum amount of Rs.50000/- to the second party workman as compensation. Thus both the issues are decided accordingly.

10. The first party is directed to pay Rs. 50000/- (Rupees Fifty Thousand) to the second party workman A. K. Vankar within 60 days from the publication of the award.

11. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 4 जून, 2019

का.आ.1080.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स चीफ पोस्टमास्टर जनरल टेलीकॉम चेंगलपटटू, चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 302/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.03.2019 को प्राप्त हुए थे ।

[सं. एल- 40012/381/2000- आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 4th June, 2019

S.O.1080.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 302/2001) of the Central Government Industrial Tribunal-cum-Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Postmaster General Telecom Chengalpattu, Chenni and Others, and their workmen which were received by the Central Government on 27.03.2019.

[No. L-40012/381/2000-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT CHENNAI

Monday, the 18th March, 2019

Present : DIPTI MOHAPATRA, Presiding Officer

I.D. No. 302/2001

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947)

BETWEEN :

Sri C. Ravi	:	1st Party/Petitioner
	AND	
The Chief Postmaster General Telecom Chengalpattu	:	2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner	:	None
For the 2nd Party/Respondent	:	Sri N. Ramaswamy, DE (Legal), Authorized Representative

The Central Government, Ministry of Labour & Employment, vide its Order No. L-40012/381/2000/IR (DU) dated 17.11.2000 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

> *"**Whether the termination and non-regularization of Sri C. Ravi by the management of General Manager, Telecom is legal and justified? If not, what relief the workman is entitled**?"*

2. On receipt of the order dated 18.07.2017 of the Hon'ble Court in WP No. 22699/2003, the instant case in ID 302/2001 is re-opened. The Hon'ble Court while adjudicated the Writ Petition directed this Tribunal to adjudicate the matter within a period of six months from the date of receipt of the copy of the order by giving opportunity to the petitioner.

3. The Industrial Dispute being referred by the appropriate government, the Government of India, the dispute was registered in ID 302/2001. After hearing the case the matter in dispute was adjudicated by this Tribunal vide its order dated 29.07.2002 passed an Award against the workman which reads as follows:

> "*In the result an Award is passed holding that the First Party / Workman, Sri C. Ravi is not entitled to any relief*".

4. Being aggrieved with the Award, the First Party Workman viz. C. Ravi approached the Hon'ble High Court of Madras in WP No. 22699 of 2003. The Hon'ble Court while parting with the Writ Petition remanded the matter to the Tribunal for fresh hearing and to adjudicate by giving sufficient opportunity to the parties. The fact of receipt of the order of the Hon'ble Court though mentioned on 22.09.2017 notice were issued to the parties, the matter could not be taken up as the post of Presiding Officer was lying vacant for a substantial period till the joining of the incumbent Presiding Officer to this Tribunal. For this obvious reason, the matter could not be disposed within six months from the receipt of the copy of the order as targeted by the Hon'ble Court in the Writ Petition (supra). A letter of request was addressed to Registrar General, High Court to place the matter before the Hon'ble Court to accord extension of time for six months for disposal of the case. With this backdrop, the case is posted to several dates i.e. on 28.12.2018, 08.01.2019, 29.01.2019, 04.03.2019, 05.03.2019, 11.03.2019 and 13.03.2019.

5. Despite of such adjournments since the petitioner did not turn up, no progress could be made. The Petitioner found to have dragged the proceeding deliberately till the date. In obedience to the Hon'ble Court's direction, even though sufficient opportunities were made available, the petitioner failed to appear before this Tribunal to adduce further evidence or to produce any document in support of his claim. The very attitude of the petitioner withholding himself from the dock clearly discloses that he has no mind to proceed with the case. It further appears that even though the original case was disposed of by this Tribunal on 29.07.2002, the Hon'ble Court sympathetically considered the submission of the Counsel for the Petitioner and remanded the dispute for fresh hearing. The case was re-opened even after a period of 17 years and sufficient opportunity was given to the petitioner by this Tribunal by virtue of the order of the Hon'ble Court. The non-cooperation of the petitioner deems that he has no mind to proceed with the case.

In view of the discussion held (supra), the petitioner is not entitled to any relief.

The reference is answered and an Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 18th March 2019)

Witnesses Examined:
For the 1st Party/Petitioner : None
For the 2nd Party/Management : None

Documents Marked :
On the petitioner's side

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 14 जून, 2019

का.आ.1081.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिल्ली मेट्रो परियोजना-, बाराखंभा, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली, के पंचाट (संदर्भ संख्या 34/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल- 42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1081.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2019) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Delhi Metro Project- , Barakhamba, New Delhi & Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 34/2019

Date of Passing Award- 23rd May, 2019

Between:

Shri Harish Prasad,
S/o Shri Bacchi Ram,
Through Rashtriya General Mazdoor Union (Regd.)
B-239, Karampura, New Delhi-15. … Workman

Versus

1. Delhi Metro Project- CC-34
   Metro Bhawan, Road Fire Bridge Lane, Barakhamba,
   New Delhi- 110001.

2. M/s. Hindustan Construction Co. (HCC- Samsung JV),
   DDA Park Behind- Hilton Hotel, Police Station Road,
   District Centre Janakpuri, New Delhi-110058.

3. M/s. Surjeet Security
   108, Pocket-7, Sector-8, Rohini, Delhi-85. … Managements

Appearances:-

Shri Ajit, (A/R)	For the Workman
None for the management No.1	For the Management No.1
None for the management No.2	For the Management No.2
Shri Abhishek, (A/R)	For the Management No.3.

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the management No.1, 2 and 3 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

The workman has alleged in the claim petition that he was working as a security guard in the establishment of management No.1 being appointed by management No.3 on a monthly salary of Rs. 10,000/-. However the management No.1 and 2 were the principal employer. During the tenure of service he was discharging his duties sincerely leaving no scope for compliant. The management had not issued letter of appointment nor extending the benefits of EPF, ESI annual increment and HRA to him. He was often making complaint about the same to the management. The management was also not allowing him the statutory leave. Being annoyed by his demands on 01.12.17 the management No.3 illegally terminated the service of the workman. While doing so the statutory provision of section 25-F of the ID Act was not followed. Finding no other way the workman had approached the Central Labour Commissioner where a conciliation proceeding was taken up being attended by the workman and the management. After several sittings between the parties and conciliation officer no settlement could be arrived. Hence, a failure report was communicated to the workman which led to the filing of the present petition.

On receipt of the notice the management No.1 and 2 did not appear. Management No.3 filed written statement refuting the claim of the workman. It is the plea of the management No.3 that the workman was engaged for a particular time period and on completion of the period his service was terminated on payment of all his dues towards full and final settlement.

At this juncture the workman and the management No.3 filed a joint petition enclosing the memorandum of settlement arrived between him and management No.3 stating therein that he has no claim against the management No.1, 2 and 3 since management No.3 has finally settled his dues.

Having regard to the settlement arrived and the contention of the parties it is held that there remains no claim of the workman to be adjudicated in this proceeding. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. But in the circumstance without cost. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1082.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिल्ली मेट्रो परियोजना-, बाराखंभा, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली, के पंचाट (संदर्भ संख्या 35/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था ।

[सं. एल-42025/03/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1082.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2019) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Delhi Metro Project- , Barakhamba, New Delhi and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 35/2019

Date of Passing Award- 23rd May, 2019

Between:

Shri Mahipal,
S/o Shri Matru Lal,
Through Rashtriya General Mazdoor Union (Regd.)
B-239, Karampura, New Delhi-15. … Workman

Versus

1. Delhi Metro Project- CC-34
   Metro Bhawan, Road Fire Bridge Lane, Barakhamba,
   New Delhi- 110001.

2. M/s. Hindustan Construction Co. (HCC- Samsung JV),
DDA Park Behind- Hilton Hotel, Police Station Road,
District Centre Janakpuri, New Delhi-110058.

3. M/s Surjeet Security
108, Pocket-7, Sector-8, Rohini, Delhi-85 …Managements

Appearances:-

Shri Ajit, (A/R)	For the Workman.
None for the management No.1	For the Management No.1
None for the management No.2	For the Management No.2
Shri Abhishek, (A/R)	For the Management No.3.

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the management No.1, 2 and 3 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

The workman has alleged in the claim petition that he was working as a security guard in the establishment of management No.1 being appointed by management No.3 on a monthly salary of Rs. 10,000/-. However the management No.1 and 2 were the principal employer. During the tenure of service he was discharging his duties sincerely leaving no scope for compliant. The management had not issued letter of appointment nor extending the benefits of EPF, ESI annual increment and HRA to him. He was often making complaint about the same to the management. The management was also not allowing him the statutory leave. Being annoyed by his demands on 01.12.17 the management No.3 illegally terminated the service of the workman. While doing so the statutory provision of section 25-F of the ID Act was not followed. Finding no other way the workman had approached the Central Labour Commissioner where a conciliation proceeding was taken up being attended by the workman and the management. After several sittings between the parties and conciliation officer no settlement could be arrived. Hence, a failure report was communicated to the workman which led to the filing of the present petition.

On receipt of the notice the management No.1 and 2 did not appear. Management No.3 filed written statement refuting the claim of the workman. It is the plea of the management No.3 that the workman was engaged for a particular time period and on completion of the period his service was terminated on payment of all his dues towards full and final settlement.

At this juncture the workman and the management No.3 filed a joint petition enclosing the memorandum of settlement arrived between him and management No.3 stating therein that he has no claim against the management No.1, 2 and 3 since management No.3 has finally settled his dues.

Having regard to the settlement arrived and the contention of the parties it is held that there remains no claim of the workman to be adjudicated in this proceeding. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. But in the circumstance without cost. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID Act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1083.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं

श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 76/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था ।

[सं. एल-14012/07/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1083.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2013) of the Central Government Industrial Tribunal cum Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/07/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 76/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Gagan Tyagi,
S/o Shri Ajay Tyagi,
Vill. & PO Sarsohedi, PO Sarsawa,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Shri Ram Enterprises,
   Near Old Post Office,
   Gill Colony,
   Saharanpur (U.P.) … Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/07/2013 IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Shri Ram Enterprises, Saharanpur in terminating the services of Shri Gagan Tyagi S/o Shri Ajay Tyagi, DG Set Operator,

w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 1st May, 2008 as a DG Set Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 17.04.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 16.04.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 16.04.12 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Shri Ram Enterprises, Sharanpur in terminating the services of Shri Gagan Tyagi, S/o Shri Ajay Tyagi, DG Set Operator w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 25th Aug, 2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 4 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary

evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to

prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 12.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1084.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 80/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/06/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1084.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/06/2013-IR DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 80/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Pradeep Kumar,
S/o Shri Rajkumar,
Vill. Salpa & PO Sorana,
Saharanpur (U.P.)- … Workman

Versus

1. M/s Garrison Engineers,
Air Force, MES, Sarsawa,
Saharanpur (U.P.)-

2. M/s. Mahadev Electricals,
Gill Colony,
Saharanpur (U.P.) … Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/06/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Pradeep Kumar S/o Shri Rajkumar, DG Set Operator, w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 14th April 2006 as a DG Set Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 12.02.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 though had entered appearance initially did not file any written statement. The said management has also not cross-examined the witness examined by the claimant to rebut the stand taken. On account of this the claim of the workman that he was never employed by management No.2 and the contract between management No.1 and 2 was sham and remained unchallenged.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Sharanpur in terminating the services of Shri Pradeep Kumar, S/o Shri Rajkumar, DG Set Operator w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 21.08.2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 4 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(iv) whether there is continuity of service; and

(v) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 12.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of

retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1085.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 108/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/26/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1085.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/2013) of the Central Government Industrial Tribunal-cum-Labour Court -2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U. P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/26/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 108/2013

Date of Passing Award- 21st May, 2019

Between:

Shri Ishwarpal,
S/o Shri Kabool Singh,
Vill. & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman
Shri Atul Bhardwaj, (Advocate) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub-section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/26/2013 IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Ishwarpal S/o Shri Kabool Singh, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 10.02.2009 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 10.09.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 18.09.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 18.09.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Ishwar Pal Singh, S/o Shri Kabool Singh, Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 3 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985**

ILJ Madras decided in W.A No. 341 of 1983 submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;
(ii) Who pays the salary/remuneration;
(iii) who has the authority to dismiss;
(iv) who can take disciplinary action;
(iv) whether there is continuity of service; and
(v) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1086.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 97/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/16/2013- आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1086.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/16/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 97/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Onkar Singh,
S/o Shri Jai Singh,
Vill. & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) … Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/16/2013 IR(DU) dated 29.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Onkar Singh S/o Shri Jai Singh, Electrician, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 2007 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 09.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 09.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Onkar Singh, S/o Shri Jai Singh, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 26thApril, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 5 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not

holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1087.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 105/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/23/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1087.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/23/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 105/2013

Date of Passing Award- 28th May, 2019

Between:

Shri Pradeep Kumar,
S/o Shri Baleshwar Sharma,
Vill., & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/23/2013-IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Pradeep Kumar S/o Shri Baleshwar Sharma, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 10.06.2007 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman stated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Pradeep Kumar, S/o Shri Baleshwar Sharma,

Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 5 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the

management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
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> (i) Who appoints the workers;
> (ii) Who pays the salary/remuneration;
> (iii) who has the authority to dismiss;
> (iv) who can take disciplinary action;
> (v) whether there is continuity of service; and
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority

of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1088.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 98/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14012/17/2013- आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1088.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 98/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/17/2013-IR (DU)]

V. K. THAKUR , Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 98/2013

Date of Passing Award- 27th May, 2019

Between:

Shri Yashpal Singh,
S/o Shri Ranjeet Singh,
Vill. Balvantpur, PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/17/2013-IR(DU) dated 29.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Yashpal Singh S/o Shri Ranjeet Singh, Electrician, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 01.12.2007 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Yashpal Singh, S/o Shri Ranjeet Singh, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 5 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best &**

Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983 submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;
(ii) Who pays the salary/remuneration;
(iii) who has the authority to dismiss;
(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section

25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1089.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 103/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/20/2013- आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1089.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/2013) of the Central Government Industrial-Tribunal cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/20/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 103/2013

Date of Passing Award- 21st May, 2019

Between:

Shri Sandeep Kumar,
S/o Shri Rampal Singh,
Vill. & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
Air Force, MES, Sarsawa,
Saharanpur (U.P.)

2. M/s. Bagga Electricals,
Sharda Nagar,
Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/20/2013-IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Sandeep Kumar S/o Shri Ram Pal Singh, Electrician, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 20.11.2008 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing

an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Sandeep Kumar, S/o Shri Rampal Singh, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 4 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal

employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld.

A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का. आ.1090.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 87/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/05/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1090.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/05/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 87/2013

Date of Passing Award- 28th May, 2019

Between:

Shri Pramod Kumar,
S/o Shri Sadhu Ram,
Vill. Sapla & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
Air Force, MES, Sarsawa,
Saharanpur (U.P.)

2. M/s. Mahadev Electricals,
Gill Colony,
Saharanpur (U.P.) … Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/05/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Pramod Kumar S/o Shri Sadhuram, DG Set Operator, w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 01.10.2010 as a DG Set Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 12.01.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by

respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management no.2 on receipt of notice though had appeared on later date remained absent and did not file written statement. Hence, by order dated 17.01.2014 he was proceeded ex-parte.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Sharanpur in terminating the services of Shri Pramod Kumar, S/o Shri Sadhuram, DG Set Operator w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 21.08.2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 1 year. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the

principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.''
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;
>
> (iv) who can take disciplinary action;
>
> (iv) whether there is continuity of service; and
>
> (v) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management nO.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before

the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 who has not controverted the pleading of the claimant and management No.1 to the effect that it is the employer of the workman and has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment is liable and shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 12.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1091.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 81/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुए थे।

[सं. एल-14012/12/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1091.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 81/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/12/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 81/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Shiv Kumar,
S/o Shri Jai Singh,
Vill. Sarsohedi & PO Sarsawa,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Shri Ram Enterprises,
   Near Old Post Office,
   Gill Colony,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/12/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s. Ram Enterprises, Saharanpur in terminating the services of Shri Shiv Kumar S/o Shri Jai Singh, Pump Operator, w.e.f. 30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 13th May, 2008 as a Pump Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 31.01.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following

the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 though had entered appearance initially did not file any written statement. The said management has also not cross-examined the witness examined by the claimant to rebut the stand taken. On account of this the claim of the workman that he was never employed by management No.2 and the contract between management No.1 and 2 was sham and remained unchallenged.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Ram Enterprises, Sharanpur in terminating the services of Shri Shiv Kumar, S/o Shri Jai Singh, Pump Operator w.e.f. 30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 25th Aug, 2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 4 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the

parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management No.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management No.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 30.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का. आ.1092.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 104/2013) की प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/22/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1092.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 104/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The

Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/22/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 104/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Raj Kumar,
S/o Shri Jeeram,
Vill. Telipur & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/22/2013 (IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Raj Kumar, S/o Shri Jeeram, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 20.10.2009 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Raj Kumar, S/o Shri Jeeram, Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 2 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The

Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management No.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory

provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का. आ.1093.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 83/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/09/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1093.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2013) of the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/09/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 83/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Mukesh Kumar,
S/o Shri Jai Singh,
Vill. Sarsohedi, PO Sarsawa,
Saharanpur (U.P.) … Workman

Versus

M/s. Garrison Engineers,
Air Force, MES, Sarsawa,
Saharanpur (U.P.) …Management

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub-section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/09/2013 (IR) (DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Mukesh Kumar S/o Shri Jai Singh, DG Set Operator, w.e.f. 12.01.2012 in violation of provisions of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 10.04.2003 as a DG Set Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner

Dehradun. Being aggrieved, the management on 12.02.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management is that the claimant might had been engaged by the contractor awarded with contract for carrying out different acts for the management. Hence, the claim petition against management is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management has also stated that the contractor awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management this management has pleaded for dismissal of the same.

In his rejoinder the workman sated that both management and contractor are guilty of suppressing the truth. He has stated that respondent is an industry, since discharging some activity for profit. However he has denied to be the employee of the contractor. The other stand taken by the workman is that, any contract existing between management and contractor was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa, Sharanpur in terminating the services of Shri Mukesh Kumar, S/o Shri Jai Singh, DG Set Operator w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/6. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management examined one of its officers as management witness No.1 to testify that the workman was never an employee of management. It has filed the copy of notice of tender and the related contract between management and contractor entered on 21.08.2001 to prove that the contractor being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management.

The contractor though has been referred to in the reference received from the Appropriate Government has not been made a party in this proceeding.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management continuously for more than 8 years. This has not been disputed by management except for the fact that he was never in the payroll of the management. The Ld. A/R further argued that the contract between the management and the contractor proved as exhibit MW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the contractor. Infact he was working for management and never an employee of the contractor. The management inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management has various works done through contractors and it has a proper tendering procedure. In such procedure the contractor was inducted and the said contractor engages several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the contractor is not a party in this proceeding.

For the admission and denial of management about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management and the workman. In the oral testimony the workman has stated to be an employee of management which has been denied by MW1 an employee of Management. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. Vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management is not authorized to for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management and the contractor being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat Vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management and his service deserves to be regularized with management.

The Ld. Counsel Mr. Bhardwaj appearing for Management submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management nor he was discharging his duty under the effective control of the management. By filing a photocopy of the contract entered between management and contractor, Mr. Bhradwaj submitted that the contractor as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management. The Ld. A/R for the management has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship

between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management. There is also no evidence that the workman was working under the supervision and control of management.

In the case of **Balwant Rai Saluja and Another Vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
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> (ii) Who pays the salary/remuneration;
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> (iii) who has the authority to dismiss;
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> (iv) who can take disciplinary action;
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> (v) whether there is continuity of service; and
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> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer i.e. the respondent, no evidence showing his appointment in the hands of management and payment of salary by management has been proved. There is absolutely no evidence to presume that management had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent no document is forthcoming. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management and recommendation letter issued by the officer of management will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be absorbed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management has taken a stand that when the service of the workman was not under the disposal of management there was no need for compliance of these provisions by management. In view of the finding arrived with regard to the employer employee relationship between the workman and the management it is held that the management cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management and contractor only to deprive him of the legitimate rights of the employment. Management has denied the allegation of sham contract entered by it with contractor. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the

minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management and contractor also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In this case the only prayer of the workman is that the management violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management for the relief sought for. This issue is accordingly answered. Hence, ordered.

ORDER

The reference be and the same is accordingly answered against the workman. It is held that the service of the workman was not terminated by the management, in violation of provision of section 25-F of the ID Act. The workman is held not entitled to the relief sought for. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ.1094.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 73/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/03/2013- आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1094.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U. .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/03/2013-IR (DU)]

V..K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 73/2013

Date of Passing Award- 22nd May, 2019

Between:

Shri Shashi Kant Sharma,
S/o Nathi Ram Sharma,
Vill. Beritaga, P/O Hasanpur,
Saharanpur (U. P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)
2. M/s. Mahadev Electricals.
   Gill Colony,
   Saharanpur (U.P.) … Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman

Shri Atul Bhardwaj, (A/R) For the Management No.1 and
For Management No.2

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/03/2013 (IR(DU) dated 03.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Shashi Kant Sharma, Electrician, w.e.f. 16.11.2011in violation of provisions of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 05.01.2002 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 16.11.2011 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 though had entered appearance initially did not file any written statement. The said management has also not cross-examined the witness examined by the claimant to rebut the stand taken. On account of this the claim of the workman that he was never employed by management No.2 and the contract between management No.1 and 2 was sham and remained unchallenged.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s. Mahadev Electricals, Sharanpur in terminating the services of Shri Shashi Kant Sharma, Electrician w.e.f. 16.11.2011, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 21.08.2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 9 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. Vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee

relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.''
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>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no.1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 16.11.2011 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का. आ.1095.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 101/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था।

[सं. एल-14012/21/2013 आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O.1095.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 101/2013) of the Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U. .P.) and Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/21/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 101/2013

Date of Passing Award- 28th May, 2019

Between:

Shri Manoj Kumar,
S/o Shri Mahender Singh,
Vill. Bansa & PO Sorana,
Saharanpur (U.P.) … Workman

Versus

1. M/s. Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s. Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P) …Managements

Appearances:-

Shri Satish Kumar, (Advocate) For the Workman

Shri Atul Bhardwaj, (Advocate) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 14012/21/2013 (IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Manoj Kumar S/o Shri Mahender Singh, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?''

The claimant/workman has stated that he was working for the management since 01.11.2011 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities.

Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s. Bagga Electricals, Sharanpur in terminating the services of Shri Manoj Kumar, S/o Shri Mahender Singh, Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman

on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 1 year. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No. 1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no

documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as- (I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;
>
> (iv) who can take disciplinary action;
>
> (v) whether there is continuity of service; and
>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management No. 1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO. 3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO. 4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1096.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 99/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14012/18/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1096.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/18/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 99/2013

Date of Passing Award-27th May, 2019.

Between:

Shri Ravindra Kumar, …Workman
S/o Shri Satpal Singh,
Vill. & PO Sorana,
Saharanpur (U.P.)

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, For the Workman
(Advocate)

Shri Atul Bhardwaj, For the Managements
(Advocate)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/18/2013 (IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Ravindra Kumar S/o Shri Satpal Singh, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?"

The claimant/workman has stated that he was working for the management since 16.02.2010 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Ravindra Kumar, S/o Shri Satpal Singh, Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 2 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

"To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.

(i) Who appoints the workers;

(ii) Who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the

said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1097.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय -2, नई दिल्ली के पंचाट (संदर्भ संख्या. 85/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14012/13/2013-आईआर-डीयू]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1097.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/2013) of the Central Government Industrial Tribunal cum Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The

Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/13/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 85/2013

Date of Passing Award-22nd May, 2019.

Between:

Shri Rakesh Kumar, ...Workman
S/o Nathi Ram,
Vill. Telipur & PO Sarsawa,
Saharanpur (U.P.)

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)

2. M/s Shri Ram Enterprises,
   Near Old Post Office,
   Gill Colony,
   Saharanpur (U.P.) ...Managements

Appearances:-

Shri Satish Kumar, (A/R) — For the Workman.

Shri Atul Bhardwaj, (A/R) — For the Management No.1
For Management No.2

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/13/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Rakesh Kumar S/o Shri Nath Ram, Electrician, w.e.f. 30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?"

The claimant/workman has stated that he was working for the management since November 2010 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised

a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 31.01.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 11.04.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 11.04.12 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Sharanpur in terminating the services of Shri Rakesh Kumar, S/o Shri Nath Ram, Electrician w.e.f. 30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
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legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 25th Aug, 2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

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FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally,

became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another Vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i)Who appoints the workers;
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> (ii)Who pays the salary/remuneration;
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> (iii)who has the authority to dismiss;
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> (iv)who can take disciplinary action;
>
> (v)whether there is continuity of service; and
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> (vi)extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 30.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Smt. PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1098.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 107/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था ।

[सं. एल-14012/25/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1098.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 107/2013) of the Central Government Industrial Tribunal cum Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019

[No. L-14012/25/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 107/2013

Date of Passing Award-22nd May, 2019.

Between:

Shri Chandrapal, …Workman

S/o Shri Rathi Ram,

Vill. Sarsohedi, PO Sarsawa,

Saharanpur (U.P.)-

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)-

2. M/s Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.)- …Managements

Appearances:-

Shri Satish Kumar, …For the Workman.

(Advocate)

Shri Atul Bhardwaj, …For the Managements.

(Advocate)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/25/2013 (IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Chandra Pal S/o Shri Rathi Ram, Electrician, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?

The claimant/workman has stated that he was working for the management since 15.06.2000 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The

management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Chandra Pal, S/o Shri Rathi Ram, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 12 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a

government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. Vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat Vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same

basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another Vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
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Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held

liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1099.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 100/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था ।

[सं. एल-14012/19/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1099.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 100/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/19/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 100/2013

Date of Passing Award-22nd May, 2019.

Between:

Shri Sukhbeer Singh, …Workman
S/o Shri Faggu Singh,
Vill., & PO Sorana,
Saharanpur (U.P.)-

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)-
2. M/s Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.)- …Managements

Appearances:-

Shri Satish Kumar, …For the Workman.
(Advocate)
Shri Atul Bhardwaj, ...For the Managements.
(Advocate)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/19/2013 (IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Sukhbeer Singh S/o Shri Faggu Singh, Electrician, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?"

The claimant/workman has stated that he was working for the management since 10.10.1995 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and

retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak Vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Sukhbeer Singh, S/o Shri Faggu Singh, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so

employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 17 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. Vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat Vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the

workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills Vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another Vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;
>
> (iv) who can take disciplinary action;
>
> (v) whether there is continuity of service; and
>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on

record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1100.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रक्षा लेखा नियंत्रक, आर्मी वेट कैंटीन, कैंट।, मेरठ (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 31/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14011/13/2012-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1100.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Controller of Defence Accounts, Army Wet Canteen,Cantt.,Meerut (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14011/13/2012-IR DU]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 31/2013

Date of Passing Award-29th May, 2019.

Between:

General Secretary, …Workman
All India Central Govt. Employees Association
F-48, Lado Sarai,
New Delhi-110030.

Versus

Controller of Defence Accounts,
Army Wet Canteen,
Cantt.,
Meerut (U.P.) …Managements

Appearances:-

Shri Love Sharma, …For the Workman.
(A/R)

Shri Atul Bhardwaj, …For the Management
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Army Wet Canteen, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14011/13/2012 (IR(DU) dated 07.03.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of CDA, Army Wet Canteen, Meerut Cantt terminated the services of Shri Shripal, Washboy, S/o Late Kanhaiya Lal w.e.f. 17.12.2009 in violation of provisions of the ID Act 1947 is unjustified? If so, what relief the workman is entitled to?"

The workman has stated in the claim petition that since 01.07.2006 he was working as a washboy in the Wet Canteen of CDA Army Meerut Cantonment. He was so inducted to work as a casual worker and no payment was made for holidays like Saturday, Sunday and public holidays. On several occasions the workman submitted a representation to the management for grant of temporary status but the same was turned down by the management. Being aggrieved the management by an oral order terminated the service of the workman w.e.f. 17.12.2019. A demand notice was served by the workman on the management and at last he approached the Assistant Labour Commissioner through the General Secretary of All India Central Government Canteen Employees Association. The Assistant Labour Commissioner noticed the management and started a conciliation proceeding. The management appeared and participated. During course of conciliation proceeding the management did not agree to reinstate the workman as a result of which a failure report was submitted by the conciliating officer and the Appropriate government referred the dispute to this tribunal for adjudication.

Being noticed the management appeared and filed WS denying the stand of the workman. While challenging the maintainability of the proceeding it has stated that the management is a government department and subordinate office of the ministry of defence. It is discharging the sovereign function of the state and never engaged in trade, business, manufacturing and production of good and service to satisfy human need. Thus, it is not an industry in terms of ID Act. It has been further stated that the claimant was never an employee of the management though the management sometimes engages casual workers on need basis for discharging different works like cleaning of office premises, cleaning of wet canteen and other casual works. These are not routine work and persons are hired on daily wage basis for specified days with the prior permission of the Competent Authority. The applicant/workman was hired for the first time on 29.08.2006 and not on 01.07.2006 as claimed by him. Alongwith him many other persons were also hired on different dates and their remuneration was paid on daily wage basis. In the year 2006 he was hired only for 9 days between 29.08.2006 to 10.10.2006. Thereby the management has stated that the workman was never employed by the management either as a casual or a regular employee and thus, the question of termination doesn't arise. Citing the case of Secretary State of Karnatak Vs. Uma Devi reported in 2006(4)SCALE 197 and various other judgments the management has stated that intermittent engagement of the workman cannot confer a right for regularization and absorption against a permanent vacancy. It is the further stand of the management that in the year 2008 the management had entered into a contract with one M/s Anu Enterprises for engagement of daily wage labourers and as such the averment of the workman that he was employed and terminated by the management is not tenable in the eye of law. With this the management has prayed for dismissal of the claim.

The workman filed rejoinder denying the stand taken by the management and further added that the nature of work discharged by the workman was perennial in nature and management after the termination of the workman has employed other persons in his place. The management is guilty of not following the rule of last come first go. The provision of section 25 of the Id Act was not followed by the management at the time of termination. Thereby he has prayed for reinstatement with all back wages.

On these rival pleadings the following issues were framed for consideration.

ISSUES

1. Whether the action of the management of CDA, Army Wet Canteen, Meerut Cantt terminating the services of Shri Shripal, Wash boy w.e.f. 17.12.2009 in violation of provisions of the ID Act 1947 is unjustified? If so its effect?

2. If not, what relief the workman is entitled to?

The workman examined himself as WW1 but proved no documents. However he filed photocopies of the Attendance Register, as secondary evidence. The management examined its officer Gitika Singh Battu as MW1 who proved 2 documents marked as MW1/1 (Colly) and MW1/2 (Colly) to disprove the stand taken by the workman.

On 27.01.2015 the workman had filed a petition calling the management to produce certain documents from its custody including the attendance Register and salary paid register in original for the year 2006, 2007

and 2008 alongwith the memorandum of understanding between the contactor and the management certain daily voucher the vacancy position in the Wet Canteen, the letter issued by the DOPT in year 1998 relating to lifting of ban on creation and filing up of post in non statutory departmental canteen. But the management by filing a written reply denied possession of these documents stating thereby that for casual labour no documents are maintained by the management. At that point of time the workman through the General Secretary of Union representing him intimated the tribunal expressing its intention not to press the application filed u/s 11(3) of the Id Act and the tribunal by order dated 29.03.2016 rejected the said petition and proceeded with the hearing.

FINDINGS

ISSUE No.1

For deciding the issue no.1 relating to legality of the alleged order of termination of service of the workman it is necessary to adjudicate the relationship between the management and the workman. It is the specific stand of the workman that he was working from 01.07.2006 to 17.12.2009 as the washboy in the Wet Canteen and the nature of work was perennial and discharged on regular basis. He was getting the remuneration at the end of the month. The workman testified himself as WW1. But no document has been filed by him to prove that he was an employee in the monthly payroll of the management. During cross-examination when called upon to file any document to prove his employee status with the management he replied in negative and also stated that no such documents can be filed. The Ld. A/R for the management on the contrary argued that at one point of time the workman had applied to the management for supply of the copy of the wage register attendance register etc and by a letter dated 05.02.2010 the management intimated that no records regarding the attendance of the workman Shri Sripal is available since he was a casual labour and such documents are maintained in respect of regular employees only. In the said letter the management has replied that no document is available regarding payment to Sripal the workman. During the proceeding the workman adduced oral evidence that he is attendance was being noted in the proper register and payments were made at the end of the month. But not a single scrap of paper to prove the same has been filed. Some photocopies of the attendance register have been filed by the workman but the said document do not contain endorsement of authenticity to believe that the said register was maintained at the behest of the management during regular course of it's official business.

On the other hand the management has filed a series of documents through its witness MW1 who also stated that the workman had in the past made several representations requesting temporary status of the employment and the management turned down the request. These documents have not been disputed by the workman in any manner. Thus, there is absolutely no evidence to presume that the workman was an employee of the management. At the same time it is pertinent to mention here that the workman has not adduced any evidence except his own oral testimony that his service was terminated. The copy of the failure report on conciliation submitted by the Assistant Labour Commissioner was taken on record which also reveals that the management at that stage had denied the status of the workman as its employee and no rebuttal evidence during this proceeding has been adduced. Thus, it is concluded that the management had never terminated the service of the workman a casual worker and the relationship as employer and employee has not been proved.

Now it is to be seen if the workman as a casual worker had rendered a continuous service for the management exceeding one year and during this period preceding to his termination had completed work for more than 240 days. The Ld. A/R for the management argued that the burden lies on the workman to prove that he had rendered service for 240 days in a calendar year and the workman has failed to discharge the burden. In the case of Municipal Council Sujanpur Vs. Surinder Kumar reported in 2006 SCC(LS) 967 the Hon'ble Supreme Court have held

> " Section 25-F and 25-B-completion of requisite statutory period of service-onus to prove. Held-lies on the workman. It is not for the management to prove the contrary. The burden of proof to establish completion of 240 days of work within a period of 12 months preceding the termination lies on the workman."

In this case there is absolutely no evidence adduced by the workman to prove this aspect of the claim. Hence, it is concluded that the service of the workman was not terminated by the management in violation of the provision of section 25-F and 25-B of the ID Act. This issue is accordingly answered against the workman.

ISSUE No.2

In view of the finding of issue no.1 it is held that the workman is not entitled to the relief sought for and the claim is liable to be dismissed. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest and it is held that the workman is not entitle to relief sought in the claim petition. The reference is accordingly answered against workman. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1101.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 110/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14012/15/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1101.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 110/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/15/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 110/2013

Date of Passing Award-28th May, 2019.

Between:

Shri Sandeep Kumar,
S/o Shri Balbeer Singh,
Vill., & PO Sorana,
Saharanpur (U.P.)- …Workman

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)-

2. M/s Bagga Electricals,
   Sharda Nagar,
   Saharanpur (U.P.) …Managements

Appearances:-

Shri Satish Kumar, …For the Workman.
(Advocate)

Shri Atul Bhardwaj, …For the Managements.
(Advocate)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/15/2013 (IR(DU) dated 29.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Sandeep Kumar S/o Shri Balbeer Singh, Helper, w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?

The claimant/workman has stated that he was working for the management since 10.02.2011 as a Helper against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Sandeep Kumar, S/o Shri Balbeer Singh, Helper w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 1 year. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering

procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhardwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1.

There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;
>
> (iv) who can take disciplinary action;
>
> (v) whether there is continuity of service; and
>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade

the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08.10.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1102.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 86/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-14012/10/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1102.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 86/2013) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi -2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/10/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 86/2013

Date of Passing Award-22nd May, 2019.

Between:

Shri Pradeep Kumar, Workman
S/o Shri Ram Pal Singh,
Vill. & PO Sorana,
Saharanpur (U.P.)-

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)-

2. M/s Mahadev Electricals,
   Gill Colony,
   Saharanpur (U.P.)- Managements

Appearances:-

Shri Satish Kumar, (A/R) For the Workman.

Shri Atul Bhardwaj, (A/R) For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/10/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Saharanpur in terminating the services of Shri Pradeep Kumar S/o Shri Ram Pal Singh, DG Set Operator, w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?

The claimant/workman has stated that he was working for the management since 1st October 2008 as a DG Set Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 12.01.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the

claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 though had entered appearance initially did not file any written statement. The said management has also not cross-examined the witness examined by the claimant to rebut the stand taken. On account of this the claim of the workman that he was never employed by management No.2 and the contract between management No.1 and 2 was sham and remained unchallenged.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Mahadev Electricals, Sharanpur in terminating the services of Shri Pradeep Kumar, S/o Shri Ram Pal Singh, DG Set Operator w.e.f. 12.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 21.08.2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 4 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no

responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;
>
> (iv) who can take disciplinary action;
>
> (v) whether there is continuity of service; and
>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 12.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID Act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1103.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 88/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.06.2019 को प्राप्त हुआ था ।

[सं. एल-14012/12/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1103.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The

Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10.06.2019.

[No. L-14012/12/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 88/2013

Date of Passing Award-22nd May, 2019.

Between:

Shri Shekhar Kumar, Workman
S/o Shri Ram Pal Singh,
Mohd. Afganan Purvi, Nakud Road,
Saharanpur (U.P.)-

Versus

1. M/s Garrison Engineers,
   Air Force, MES, Sarsawa,
   Saharanpur (U.P.)-

2. M/s Shri Ram Enterprises
   Near Old Post Office,
   Gill Colony,
   Saharanpur (U.P.)- …Managements

Appearances:-

Shri Satish Kumar, …For the Workman.
(A/R)

Shri Atul Bhardwaj, …For the Managements
(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/14/2013 (IR(DU) dated 11.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Shri Ram Enterprises, Saharanpur in terminating the services of Shri Shekhar Kumar, S/o

Shri Rampal Singh, Pump Operator, w.e.f.30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?"

The claimant/workman has stated that he was working for the management since 01st May, 2008 as a Pump Operator against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 31.01.2012

by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 though had entered appearance initially did not file any written statement. The said management has also not cross-examined the witness examined by the claimant to rebut the stand taken. On account of this the claim of the workman that he was never employed by management No.2 and the contract between management No.1 and 2 was sham and remained unchallenged.

In his rejoinder the workman sated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Shri Ram Enterprises, Sharanpur in terminating the services of Shri Shekhar Kumar, S/o Shri Rampal Singh, Pump Operator w.e.f. 30.01.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?

2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?

3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?

4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 25th Aug, 2001 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 6 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide

labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1. There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
>
> (i) Who appoints the workers;
>
> (ii) Who pays the salary/remuneration;
>
> (iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 30.01.2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1104.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गैरीसन इंजीनियर, वायु सेना, एमईएस, सरसावा, सहारनपुर (यू.पी.)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 106/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था ।

[सं. एल-14012/24/2013-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1104.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 106/2013) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi -2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Garrison Engineers, Air Force, MES, Sarsawa, Saharanpur (U .P.) & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-14012/24/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 106/2013
Date of Passing Award-22nd May, 2019.

Between:

Shri Naveen Kumar, …Workman
S/o Shri Rameshwar Dutt Sharma,
Vill. Maheshpur, PO Badgaon Distt.,
Saharanpur (U.P.)-

Versus

1. M/s Garrison Engineers,
Air Force, MES, Sarsawa,
Saharanpur (U.P.)-

2. M/s Bagga Electricals
Sharda Nagar,
Saharanpur (U.P.)- …Managements

Appearances:-

Shri Satish Kumar, (A/R) …For the Workman.

Shri Atul Bhardwaj, (A/R) …For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Air Force, MES, Sarsawa, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/24/2013-IR(DU) dated 30.07.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Saharanpur in terminating the services of Shri Naveen Kumar S/o Shri Rameshwar Dutt, Electrician w.e.f. 08/10/2012, in violation of provision of section 25-F,G,H of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?

The claimant/workman has stated that he was working for the management since 10.04.2005 as an Electrician against a permanent vacancy being directly appointed by the management. During the tenure of the employment he was discharging his duties to the utmost satisfaction of the management and had completed work for more than 1 year and 240 days in a calendar year preceding the order of termination. Though the workman was often demanding appointment letter minimum wage and all other service benefits including periodical increment in salary the management did not pay heed to the same and avoided saying that the salary will be increased on getting approval from the higher authorities. Finding no other way the workman had raised a dispute before the Regional Labour Commissioner Dehradun. Being aggrieved, the management on 08.10.2012 by an oral order terminated the service of the workman. At the time of termination the statutory provision of ID Act was not complied. Neither he was given termination notice nor the notice pay and retrenchment compensation. The workman made representation to the higher authorities of the management praying reinstatement to service with back wages and all other service benefits.

It has also been stated by the workman that the nature of work discharged by him was perennial in nature and other persons junior to him are working in the said post for the management. The management is thus guilty of not following the provisions of section 25-G of the ID Act as the rule of last come first go was not adhered to. Hence by filing the present claim petition the workman has sought for the redress.

The management No.1 Garrison Engineers (AF) filed written statement denying employer employee relationship between the workman and the management No.1. It has been stated that the Garrison engineering is a part of Indian Army discharging sovereign function of the government and never an industry to come under the fold of Industrial Dispute Act. It never carries out trade or business or any activity relating to production, supply and service meant for satisfying human wants. The further stand of the management No.1 is that the claimant might had been engaged by respondent No.2 the contractor awarded with contract for carrying out different acts for the management No.1. Hence, the claim petition against management No.1 is not maintainable and liable to be dismissed. Citing the judgment of the Apex Court passed by the Constitution Bench in the case of State of Karnatak vs. Uma Devi the management No.1 has stated that the workman since engaged as contractual worker under the contractor cannot claim any right either for regularization or for seeking parity with other regular employees. It has also been stated that the management being a government department has its own recruitment rules and the workman cannot be regularized against a permanent vacancy. The management No.1 has also stated that the management No.2 awarded a contract and the workman might have engaged by the said contractor who was awarded with the contract through proper tender calling. Challenging the loco-standni of the workman to initiate a proceeding against management No.1 this management has pleaded for dismissal of the same.

The management No.2 has filed separate written statement pleading inter alia that the workman was engaged for work by the management No.2. He out of his own volition left the job of the management No.2 on 08.10.2012 by filing an affidavit. He was not a reliable person nor obedient. He was an electrician working on contractual basis for respondent No.1and not for respondent No.2. On several occasions oral complaints were received from respondent No.1 regarding the manner of work of the claimant which led to the dissatisfaction of the management No.2. On account of this the claimant voluntarily quit the job on 08.10.2012 by giving an

affidavit to that effect. All other allegation leveled by the workman has been denied by management No.2 who also pleaded for dismissal of the claim petition.

In his rejoinder the workman stated that both management No.1 and 2 are guilty of suppressing the truth. He has stated that respondent No.1 is an industry, since discharging some activity for profit. However he has denied to be the employee of management No.2. The other stand taken by the workman is that, any contract existing between management No.1 and 2 was sham and camouflage designed to deprive the workman of his legitimate rights for employment and reinstatement.

On this rival pleading following issues were framed for consideration.

ISSUES

1. Whether the action of the management of Garrison Engineer, Air Force, Sarsawa and M/s Bagga Electricals, Sharanpur in terminating the services of Shri Naveen Kumar, S/o Shri Rameshwar Dutt, Electrician w.e.f. 08.10.2012, in violation of provision of section 25-F,G,H of ID Act, 1947 in unjustified? If so its effect?
2. Whether relationship of employer and employee exits between respondent No.1 and workman? If so its effect?
3. Whether contract between respondent No.1 and Respondent No.2 was camouflage? If So its effect?
4. What relief the workman is entitled to?

During the proceeding the workman examined himself as WW1 and proved the documents and Marked those in a series of WW1/1 to WW1/7. These documents include the copy of the temporary pass the copy of the order passed by the Regional Labour Commissioner, 1 RTI information obtained to prove that the workman was working for management No.1 and the order of renewal of his entry pass etc. He has also filed a copy of the legal notice served and reply thereto marked as WW1/7 and WW1/6 respectively. On the other hand the management No.1 examined one of its officers as management witness No.1 to testify that the workman was never an employee of management No.1. It has filed the copy of notice of tender and the related contract between management No.1 and management No. 2 entered on 24th Aug, 2007 to prove that the management No.2 being the awardee of the contract might have engaged the workman on contractual basis and the persons so employed through the contactor are usually issued with gate pass for 30 days which gets renewed from time to time. The present workman was neither under the payroll nor employment of management No.1.

Management No.2 though had filed written statement remained absent during the later part of the proceeding and at last did not adduce any oral or documentary evidence.

At the outset of the argument the Ld. A/R for the workman submitted that the document and oral evidence adduced by the workman clearly proves that he was working for the management No.1 continuously for more than 9 years. This has not been disputed by management No.1 except for the fact that he was never in the payroll of the management No.1. The Ld. A/R further argued that the contract between the management No.1 and 2 proved as exhibit WW1/1 is a sham document created only to deprive the workman of his legal rights. While arguing on the effective control test to decide the employer employee relationship he submitted that the workman was never the employee of the contractor.

On the contrary the management No.1 through it's A/R argued that the oral or documentary evidence adduced by the claimant are not sufficient to establish the employer employee relationship between the parties. There is absolutely no evidence either oral or documentary to prove that he was working under the effective control of management No.1. While referring to written statement filed by management No. 2 this management No.1 argued that when management No. 2 has admitted himself to be the employer of the workman no responsibility can be fixed on the management No.1. It was further argued that the management No.1 being a government department strictly follows the recruitment rules keeping in view the constitutional mandate of public employment.

FINDINGS

ISSUE No.1 and 2

These 2 issues being interdependent have been taken up for consideration together. The workman examined as WW1 has stated that he was a contractual employee of Garrison Engineers Air Force, Sarsawa and to deprive him of his legal right the management had created a sham contract with the management No.2. Infact he was working for management No.1 and never an employee of management No. 2. The management no.1 inter-alia pleaded that it is a government department having strict rule of employment. There is no provision for contractual employment nor any person is appointed without following the due procedure of public employment. The management No.1 has various works done through contractors and it has a proper tendering

procedure. In such procedure the management No.2 was inducted as a contractor and the said management had engaged several persons to execute the work of contract. This claimant/workman might have been engaged through the contractor and thus, there exists no employer employee relationship between them. At the cost of repetition be it stated here the management No.2 had initially entered appearance and filed a written statement admitting the workman to be his employee. Later on the management No.2 did not participate in the proceeding. In the written statement the management No. 2 clearly admitted that the workman was appointed by him and out of his own volition he resigned from service as his performance was not satisfactory.

For the admission and denial of management No.1 and 2 about the status of the workman it is now necessary to examine if there existed any relationship as employer and employee between management No.1 and the workman. In the oral testimony the workman has stated to be an employee of management No.1 which has been denied by MW1 an employee of Management No.1. The Ld. Counsel for the workman by placing reliance in the case of **Workmen of Best & Crompton Industries Ltd. vs. Management of Best & Crompton Engineering Ltd. and Others reported in 1985 ILJ Madras decided in W.A No. 341 of 1983** submitted that when the workmen was engaged by a contractor not holding a valid license, the workmen so engaged working for the management would be treated as a workman by the management itself. Describing the same as unfair labour practice the Ld. A/R for the workman submitted that in this case the management No.1 had no license for engaging contract labourers. Not only that the contractor management No. 2 was not authorized to provide labourers on contract to the management No.1 too, in compliance to the provision of Contract Labour Abolition Act. The so called contract between management No.1 and 2 being a camouflage cannot be taken into consideration and the consequence thereof is that the workman was an employee of the management No.1. He also relied upon the judgment of the Hon'ble Supreme Court in the **Umrala Gram Panchayat vs. Secretary Municipal Employees Union & Ors. reported in 2015 Law Suit (SC) Page 298** and argued that the workman who was allowed to work for a long time for the management No.1 and later driven out illegally, became a victim of unfair labour practice. He also argued that as observed by the Hon'ble Supreme Court in the case of Umrala Gram Panchayat, no documentary evidence need to be brought on record to show that the workman was an employee of management No.1 and his service deserves to be regularized with management No.1.

The Ld. Counsel Mr. Bhardwaj appearing for Management No.1 submitted that in this case there is absolutely no evidence brought on record to believe that at any point of time the present workman was working under the supervision and control of management No.1. He pointed out the cross-examination part of the workman wherein he has admitted that during the tenure of his service he was getting his salary from J.E of MES but no document to that effect has been filed. Similarly during cross-examination though he admitted about interview conducted by the J.E of MES no documentary evidence to that effect has been put on record. On the contrary MW1 the Assistant Engineer has clearly stated that at no point of time the workman was getting salary from the management No.1 nor he was discharging his duty under the effective control of the management No.1. By filing a photocopy of the contract entered between management No.1 and 2, Mr. Bhradwaj submitted that the management No.2 as per the terms of the contract had to deploy manpower for carrying out the work specified in the contract. The said contract was a fixed term contract and the persons deployed by the contractor have no relationship with the management No.1. The witness examined on behalf of the management has also stated that the contractor was being paid the remuneration for the work who might have been paying to the workman.

There is absolutely no evidence on record about the payment of wage subscription of PF and Insurance of the workman by the management No.1. The Ld. A/R for the management No.1 has placed reliance in several pronouncements of the Supreme Court to argue that when there is no direct evidence regarding the employer employee relationship between the parties the court and the Tribunal has to draw an inference on the same basing upon different factors. He also submitted that the Hon'ble Supreme Court have evolved certain test for drawing such inference.

To support his contention he has placed reliance in the case of **General Manager Bengal Nagpur Cotton Mills vs. Bharat Lal and Another reported in (2011)1 SCC 635.** In this case the Hon'ble Supreme Court while considering the legality of the direction given by the Labour Court to the first respondent for reinstatement of the workman came to hold that for directing reinstatement it is first of all to be decided whether there exist any employer employee relationship between the first respondent and the workman. To determine whether the contract labourer is a direct employee of the principal employer, the Hon'ble Supreme Court laid down two well recognized tests such as-(I) Whether principal employer pay salary instead of the contractor (II) whether the principal employer control and supervises the work of the employees. The Hon'ble Supreme Court further held that merely because officers of principal employer gave some instruction to the employee of the contractor that would not make him an employee of the Principal Employer.

The Ld. Counsel for the management No.1 on the basis of this judgment submitted that there is absolutely no evidence on record except the oral statement of WW1 that he was being paid salary by management No.1.

There is also no evidence that the workman was working under the supervision and control of management No.1.

In the case of **Balwant Rai Saluja and Another vs. Air India Limited and Others reported in (2014) 9 SCC 407** the Hon'ble Supreme Court held:

> "To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer employee relationship would include, inter alia.
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>
> (vi) extent of control and supervision i.e. whether there exists complete control and supervision."

Reverting back to the facts of the present case, the workman though claims to be the employee of the principal employer respondent No.1, no evidence showing his appointment in the hands of management No.1 and payment of salary by management No.1 has been proved. There is absolutely no evidence to presume that management No.1 had the authority of taking disciplinary action against the workman. Not only that except the oral evidence of the workman that he had completed 240 days of work in a calendar year for respondent No.1 no document is forthcoming. Having the admission of respondent No.2 in the back ground that the workman was employed by him the only evidence regarding completion of 240 days of work in the premises of management No.1 shall not establish his relationship with management No.1 as its employee. Hence, from the evidence on record it is held that the workman having the burden to prove his relationship with management No.1 as employer and employee, failed to prove so. The documents like gate pass issued by the management No.1 and recommendation letter issued by the officer of management No.1 will not suffice the standard of proof required for the purpose. The Principle decided in the case of Umrala Gram Panchayat referred supra & relied by the workman has no applicability on facts of this case since in Umrala case, admittedly the workmen were engaged by the Gram Panchayat for a long period on daily wage and then terminated. Thus the Court directed that the nature of work being perennial, the workman should be observed permanently and treated at par with regular employees of same cadre. But here, the evidence lacks to prove employment of the workman by management No.1.

The workman has alleged that at the time of termination the statutory provision of section 25-F,G,H of the ID Act were not followed by the management No.1 as no retrenchment notice and compensation was paid nor the principle of last come first go was followed. In reply the management no..1 has taken a stand that when the service of the workman was not under the disposal of management No.1 there was no need for compliance of these provisions by management No.1. In view of the finding arrived with regard to the employer employee relationship between the workman and the management No.1 it is held that the management No.1 cannot be held liable for non compliance of the statutory provision and it cannot be said to have taken an unjust action of termination against the workman. These two issues are accordingly answered against the workman.

ISSUE NO.3

The workman has alleged that a contract was entered between the management No.1 and 2 only to deprive him of the legitimate rights of the employment. Management No.2 admitted to be the employer of the workman with an explanation that he himself resigned from the job and this is not a case of termination. Management No.1 has denied the allegation of sham contract entered by it with management no.2. A copy of the contract has been filed and exhibited as MW1/1. This contract is pursuant to tender call notice and contains the detail terms of contract. This tribunal finds no reasons of disbelieving the genuineness of this contract. The Ld. A/R for the workman during course of argument submitted that the contract contains a clause about the minimum wage to be paid to the workman. That having not been done and the workman since was deprived of minimum wage which is evident from the complaint lodged by him before the labour commissioner lead to a conclusion that the

said contract was a sham transaction. But this argument of the Ld. A/R doesn't sound convincing since non compliance of certain clause of a contract may make the contract partially non enforceable, but would not grade the contract as sham transaction. Hence it is held that the allegation about the sham contract entered between the management no.1 and 2 also fails. This issue is accordingly answered against the workman.

ISSUE NO.4

In view of the pleading and evidence of the parties it is found that the workman has not sought any relief from management No.2. His only prayer is that the management No.1 violated the provision of section 25-F of the Act and he should be reinstated to service with all back wages and other service benefits. While answering issue No.1 and 2, it has been held that management no.1 is not the employer of the workman nor the service of the workman was terminated by the said management. Hence, no responsibility can be saddled on management No.1 for the relief sought for. However it is felt proper that the management No.2 which admitted to be the employer of the workman since has not adduced any rebuttal evidence regarding the non-payment of retrenchment compensation to the workman at the time of retrenchment shall pay the retrenchment compensation in terms of section 25-F (b) of the ID Act 1947. This issue is accordingly answered in favour of the workman. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the workman. It is held that the service of the workman has been terminated by the management No.2 with effect from 08/10/2012 in violation of provision of section 25-F of the ID Act. The management No.2 shall pay retrenchment compensation in terms of section 25-F (b) of the ID Act. 1947 to the workman within 2 months from the date when this award would become enforceable alongwith interest @ 12% per annum from the date of termination till the date of payment. The management No. 2 if would fail to make the payment within the time stipulated the amount shall carry interest @ 18% per annum from the date of retrenchment till the payment is made. Copy be supplied to the parties and the record be consigned in the record room. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1105.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिल्ली मेट्रो परियोजना-, बाराखंभा, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 36/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-42025/03/2019 आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1105.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2019) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Delhi Metro Project-, Barakhamba, New Delhi & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 36/2019

Date of Passing Award-23rd May, 2019.

Between:

Shri Brijram, …Workman

S/o Shri Chhotey Lal,

Through Rashtriya General Mazdoor Union (Regd.)

B-239, Karampura, New Delhi-15.

Versus

1. Delhi Metro Project-CC-34
   Metro Bhawan, Road Fire Bridge Lane, Barakhamba,
   New Delhi-110001.

2. M/s Hindustan Construction Co. (HCC-Samsung JV),
   DDA Park Behind-Hilton Hotel, Police Station Road,
   District Centre Janakpuri, New Delhi-110058.

3. M/s Surjeet Security
   108, Pocket-7, Sector-8, Rohini, Delhi-85. …Managements

Appearances:-

Shri Ajit, …For the Workman.

(A/R)

None for the management No.1 For the Management No.1

None for the management No.2 For the Management No.2

Shri Abhishek, For the Management No.3.

(A/R)

AWARD

This is an application filed u/s 2-A of the ID Act by the workman against the management No.1, 2 and 3 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

The workman has alleged in the claim petition that he was working as a security guard in the establishment of management No.1 being appointed by management No.3 on a monthly salary of Rs. 10,000/-. However the management No.1 and 2 were the principal employer. During the tenure of service he was discharging his duties sincerely leaving no scope for compliant. The management had not issued letter of appointment nor extending the benefits of EPF, ESI annual increment and HRA to him. He was often making complaint about the same to the management. The management was also not allowing him the statutory leave. Being annoyed by his demands on 01.12.17 the management No.3 illegally terminated the service of the

workman. While doing so the statutory provision of section 25-F of the ID Act was not followed. Finding no other way the workman had approached the Central Labour Commissioner where a conciliation proceeding was taken up being attended by the workman and the management. After several sittings between the parties and conciliation officer no settlement could be arrived. Hence, a failure report was communicated to the workman which led to the filing of the present petition.

On receipt of the notice the management No.1 and 2 did not appear. Management No.3 filed written statement refuting the claim of the workman. It is the plea of the management No.3 that the workman was engaged for a particular time period and on completion of the period his service was terminated on payment of all his dues towards full and final settlement.

At this juncture the workman and the management No.3 filed a joint petition enclosing the memorandum of settlement arrived between him and management No.3 stating therein that he has no claim against the management No.1, 2 and 3 since management No.3 has finally settled his dues.

Having regard to the settlement arrived and the contention of the parties it is held that there remains no claim of the workman to be adjudicated in this proceeding. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. But in the circumstance without cost. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1106.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिल्ली मेट्रो परियोजना-, बाराखंभा, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या. 32/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-42025/03/2019-आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1106.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2019) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Delhi Metro Project-, Barakhamba, New Delhi & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,

Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 36/2019

Date of Passing Award-23rd May, 2019.

Between:

Shri Binod Kumar Thakur, …Workman
S/o Shri Chandrika Thakur
Through Rashtriya General Mazdoor Union (Regd.)
B-239, Karampura, New Delhi-15.

Versus

1. Delhi Metro Project-CC-34
Metro Bhawan, Road Fire Bridge Lane, Barakhamba,
New Delhi-110001.

2. M/s Hindustan Construction Co. (HCC-Samsung JV),
DDA Park Behind-Hilton Hotel, Police Station Road,
District Centre Janakpuri, New Delhi-110058.

3. M/s Surjeet Security
108, Pocket-7, Sector-8, Rohini, Delhi-85. …Managements

Appearances:-

Shri Ajit,	…For the Workman.
(A/R)	
None for the management No.1	For the Management No.1
None for the management No.2	For the Management No.2
Shri Abhishek,	For the Management No.3.
(A/R)	

AWARD

This is an application filed u/s 2-A of the ID Act by the workman against the management No.1, 2 and 3 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

The workman has alleged in the claim petition that he was working as a security guard in the establishment of management No.1 being appointed by management No.3 on a monthly salary of Rs. 10,000/-. However the management No.1 and 2 were the principal employer. During the tenure of service he was discharging his duties sincerely leaving no scope for compliant. The management had not issued letter of appointment nor extending the benefits of EPF, ESI annual increment and HRA to him. He was often making complaint about the same to the management. The management was also not allowing him the statutory leave. Being annoyed by his demands on 01.12.17 the management No.3 illegally terminated the service of the workman. While doing so the statutory provision of section 25-F of the ID Act was not followed. Finding no other way the workman had approached the Central Labour Commissioner where a conciliation proceeding was taken up being attended by the workman and the management. After several sittings between the parties and conciliation officer no settlement could be arrived. Hence, a failure report was communicated to the workman which led to the filing of the present petition.

On receipt of the notice the management No.1 and 2 did not appear. Management No.3 filed written statement refuting the claim of the workman. It is the plea of the management No.3 that the workman was engaged for a particular time period and on completion of the period his service was terminated on payment of all his dues towards full and final settlement.

At this juncture the workman and the management No.3 filed a joint petition enclosing the memorandum of settlement arrived between him and management No.3 stating therein that he has no claim against the management No.1, 2 and 3 since management No.3 has finally settled his dues.

Having regard to the settlement arrived and the contention of the parties it is held that there remains no claim of the workman to be adjudicated in this proceeding. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. But in the circumstance without cost. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 14 जून, 2019

का.आ. 1107.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सरकार मेसर्स दिल्ली मेट्रो परियोजना-, बाराखंभा, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 33/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-42025/03/2019 आईआर-(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 14th June, 2019

S.O. 1107.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2019) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Delhi Metro Project-, Barakhamba, New Delhi & Others, and their workmen which were received by the Central Government on 10/06/2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 33/2019

Date of Passing Award-23rd May, 2019.

Between:

Shri Bijender, …Workman
S/o Shri Hari Chand,
Through:-Rashtriya General Mazdoor Union (Regd.)
B-239, Karampura, New Delhi-15.

Versus

1. Delhi Metro Project-CC-34
   Metro Bhawan, Road Fire Bridge Lane, Barakhamba,
   New Delhi-110001.
2. M/s Hindustan Construction Co. (HCC-Samsung JV),
   DDA Park Behind-Hilton Hotel, Police Station Road,
   District Centre Janakpuri, New Delhi-110058.
3. M/s Surjeet Security
   108, Pocket-7, Sector-8, Rohini, Delhi-85. …Managements

Appearances:-

Shri Ajit, (A/R)	…For the Workman.
None for the management No.1	For the Management No.1
None for the management No.2	For the Management No.2
Shri Abhishek, (A/R)	For the Management No.3.

AWARD

This is an application filed u/s 2-A of the ID Act by the workman against the management No.1, 2 and 3 praying a direction to the management to reinstate the workman to service with full back wages and all other consequential benefits.

The workman has alleged in the claim petition that he was working as a security guard in the establishment of management No.1 being appointed by management No.3 on a monthly salary of Rs. 10,000/-. However the management No.1 and 2 were the principal employer. During the tenure of service he was discharging his duties sincerely leaving no scope for compliant. The management had not issued letter of appointment nor extending the benefits of EPF, ESI annual increment and HRA to him. He was often making complaint about the same to the management. The management was also not allowing him the statutory leave. Being annoyed by his demands on 01.12.17 the management No.3 illegally terminated the service of the workman. While doing so the statutory provision of section 25-F of the ID Act was not followed. Finding no other way the workman had approached the Central Labour Commissioner where a conciliation proceeding was taken up being attended by the workman and the management. After several sittings between the parties and conciliation officer no settlement could be arrived. Hence, a failure report was communicated to the workman which led to the filing of the present petition.

On receipt of the notice the management No.1 and 2 did not appear. Management No.3 filed written statement refuting the claim of the workman. It is the plea of the management No.3 that the workman was engaged for a particular time period and on completion of the period his service was terminated on payment of all his dues towards full and final settlement.

At this juncture the workman and the management No.3 filed a joint petition enclosing the memorandum of settlement arrived between him and management No.3 stating therein that he has no claim against the management No.1, 2 and 3 since management No.3 has finally settled his dues.

Having regard to the settlement arrived and the contention of the parties it is held that there remains no claim of the workman to be adjudicated in this proceeding. Hence, ordered.

ORDER

The claim of the workman be and the same is dismissed. But in the circumstance without cost. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ.1108.—राष्ट्रपति, श्री मृनमोय कुमार भट्टाचार्जी, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, गुवाहाटी को सौंपे गए केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय, आसनसोल के पीठासीन अधिकारी का अतिरिक्त प्रभार की अवधि को दिनांक 22.05.2019 से छः माह से आगे की अवधि अथवा नियमित पदधारी की नियुक्ति तक अथवा अगले आदेशों तक, इनमे जो भी पहले हो के पीठासीन अधिकारी के पद का अतिरिक्त प्रभार सौपते है।

[सं. अ-11016/03/2015-सीएलएस.II]

संजीव नंदा, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1108.—The President is pleased to extend the period of additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Asansol entrusted to Shri Mrinmoy Kumar Bhattacharjee, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Guwahati for a further period of six months with effect from 22.05.2019 or till the appointment of a regular incumbent or until further orders, whichever is the earliest.

[No. A-11016/03/2015-CLS-II]

SANJEEV NANDA, Under Secy.

नई दिल्ली, 20 जून, 2019

का.आ. 1109.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सरकार मेसर्स मैंगनीज ओर (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या. 48/2013-14) को प्रकाशित करती है जो केन्द्रीय सरकार को 10/06/2019 को प्राप्त हुआ था।

[सं. एल-27011/1/2013-आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2013-14) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Managanese Ore (India) Ltd. and their workman, which was received by the Central Government on 11.06.2019

[No. L-27011/1/2013-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/48/2013-14 Date: 03.05.2019.

Party No.1 : The Chairman-cum-Managing Director,
M/s Managanese Ore (India) Ltd.,
MOIL Bhawan, 1-A, Katol Road,
Nagpur (Maharashtra).

Versus

Party No.2 : Shri Rajkumar Mohare,
The General Secretary,
Bhartiya Manganese Mazdoor Sangh (BMS),
Bharveli, Distt.Balaghat (MP).

AWARD

(Dated: 03rd May, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Manganese Ore(India) Ltd. and their Union, Bhartiya Manganese Mazdoor Sangh (BMS) for adjudication, as per letter **No.L-27011/1/2013-IR (M) dated 21.08.2013,** with the following schedule:-

"Whether the demand of the Union to regularize 73 numbers (as per list enclosed) of temporary contract labourers of M/s. Ambika Enterprises working in Bharveli Mines of MOIL, Balaghat Mines Post Bharveli Distt. Balaghat (MP) as permanent workers in the MOIL Company is justified, valid and reasonable? If yes, what relief the union/workman is entitled to an from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Bhartiya Manganese Mazdoor Sangh (BMS) ("the union" in short) filed the statement of claim and the management of MOIL (here-in-after referred to as the "Party No. 1") filed its written statement.

The case of the union as projected in the statement of claim is that, Party No. 1 has set up Ferro Manganese Plant and Electrolytic Manganese dioxide Plant for sale of ore and earned profit, which comes in purview of industry. 73 workers were deployed by M/s Ambika Enterprises at Dhanbad in connection with work of deepening of production shaft at Bharveli Mines. These activities therefore are of perennial nature and activities were controlled against the provisions of Contract Labour (Regulation & Abolition) Act, 1970. So, these workers acquired the status of permanent workers, because they were working for more than 240 days in a calendar year. According to the union, workers were working under the direct supervision and control of officers engaged by Party No. 1, the contractor is merely a name lender commission agent. All the workers were in the industry of Party No. 1 from last 8 years.

3. According to the union, Party No. 1 is adopting discriminatory approach in the matter of regularization of contract labour, Party No. 1 entered into settlement for regularization of contract labours on 20.01.2003 and 17.11.2006, but they adopted unfair legal practice, because above 73 workers have been denied payment of wages and other facilities as per provisions. The Hon'ble High Court also directed the Party No. 1 to produce documents, so above 73 workers are entitled to be absorbed as regular workers. By filing the statement of claim, union prayed that, all above 73 workers are entitled to regularization from 2007 and also prayed permanency in job with retrospective effect and also prayed for grant of regular pay scale and all other benefits available at that time.

4. By filing written statement on behalf of the Party No. 1, they denied all the material facts, which were asserted in the statement of claim. According to them, M/s Ambika Enterprises was awarded contractual work of deepening, lining and equipping, furnishing and allied work of production of shaft at Balaghat Mines. M/s Ambika Enterprises completed its work on 30.11.2011. They received the work contract after obtaining the valid labour license. According to the Party No. 1, contract work was completed by the contractor on 30.11.2011 for a specific period, so service of workers deemed to be terminated by the contractor as per provisions of Contract Labour Act and there is no employee employer relation between the workers and Party No. 1. It is denied that, alleged73 workers had been working with Party No. 1 from 2007. It is also denied that, each worker completed more than 240 days of work in each calendar year, so there is no question of regularization of contract workers.

5. It is also denied that, all these workers were working under the direct supervision and control of the officers of Party No. 1. According to the Party No. 1, union had raised the issue on 20.01.2003 and tripartite settlement was taken place between the Party No. 1 and 92 workers, but present 73 workers were contractual employees, have been deployed on temporary basis, so Party No. 1 under no legal or contractual obligation to regularize them. According to the Party No. 1, they have some records regarding these employees, but record concerned M/s Ambika Enterprises, were not in custody of Party No. 1, so according to the Party No. 1, they are not entitled to any relief. They also asserted that, this Tribunal in Case No. CGIT/NGP/98/2007 held that, workers are not entitled to any relief, so they prayed that, reference is answered in negative, workers are not entitled to any relief and the case has no merit in the eye of law.

6. Union filed a rejoinder on same footing as statement of claim. According to the union, Party No. 1 is twisting of the facts and misleading the Tribunal. They also asserted that, settlement deed and contract documents in exclusive possession of the Party No. 1, have not been filed on records, so they prayed as reiterated in the statement of claim and denied all facts, mentioned in the W.S.

7. **Point of determination:**

i. Whether the above 73 workers are entitled for regularization?

ii. Whether they are the employee of Party No. 1?

iii. Whether they are entitled to any relief?

Reason for determination:

8. On behalf of the union, they argued that, 73 workers were deployed by the Party No. 1 through Ambika Enterprises, this activity is of perennial nature, work has to be performed with quality, hence it requires supervision and control of Party No. 1 and also argued that, all 73 workers performed their work from last 8 years in continuation in service for more than 240 days per calendar year. They relied four case laws i.e. Kingfisher Airlines Limited Vs. Capt. Prithvi Malhotra 2013 CLR 79, Devinder singh Vs. Municipal Council 2011 II CLR 461, Director, Fisheries Terminal

Division Vs. Bhikubhai Meghajibhai Chavda AIR 2010 SC 1236 and Devinder singh Vs. Municipal Council (2011) 6 SCC 584.

9. On the contrary, Party No. 1 in its written argument admitted that, Ambika Enterprises was awarded contractual work of deepening, lining and equipping and allied work of production of shaft, they completed their work on 30.11.2011 under the provision of Contract Labour Act after obtaining valid labour license, so after completion of contractual work, services of the worker was deemed to be terminated. They also argued that, there is no question of regularization of contractual work as it is in contravention with constitutional provisions, so argument of Party No. 1 was that, alleged acquiring the status of permanent worker cannot arise. Now I want to see the evidence part.

10. On behalf of the union, Mr. Rajkumar was examined in support of their statement of claim. He admitted the documents M-I, M-II and M-III of Party No. 1 and also admitted that, Party No. 1 gave a contract to Ambika Enterprises and that firm employed 73 workers. He also admitted that, they have not filed any document regarding the membership of 73 workers and also not filed any document, which show that, union authorized to take their claim before the Tribunal. In this way, union failed to prove that, they authorized Mr. Rajkumar to give statement or raise the dispute before this Tribunal. They also failed to prove that, all the 73 workers are their union members.

11. Mr. Rajkumar also admitted that, the Party No. 1 gave a contract of award to Ambika Enterprises to deepening the shaft at Bharveli Mines at Balaghat. He also admitted that, contract was given to above firm by the Party No. 1 on 14.06.2007 and completed the work on 23/29.05.2012. He also admitted that, Party No. 1 issued a Commence Certificate in favour of above firm. He also admitted that, workers were not employed by the Party No. 1. He also admitted that, all documents filed by the union show that, all the above workers were working for the above firm. Now I want to see the evidence of Party No,1.

12. The Party No. 1 examined Shri Nitin Pagnis, Dy. General Personnel Manager as an authorized representative of their company. He supported the W.S. with five documents, M-I to M-V, namely License issued in favour of M/s Ambika Enterprises for engaging contract labourers, Commencement Order dated 29.06.2007, Contract Certificate dated 26.07.2007, Completion Certificate dated 21.05.2012 and 29.05.2012 and License issued by the ALC in favour of M/s Ambika Enterprises, but he has no knowledge of some facts eg he has no knowledge about the prior contractor to Ambika Enterprises, he has also no knowledge, whether same workers were working there, reason shown by this witness is that, he was posted at Nagpur Head Quarter, there is different Personnel Manager at Mines, but according to him, he has direct link with working mines. In this way, his statement shows that, there was connectivity with mines day to day work and it shows that, he gave a statement on the basis of record. He also asserted that, there are two types of nature of work, some are permanent nature and some are temporary nature. According to him, they were neither employed directly nor they were controlled or supervised their work.

In this way, this statement remained unrebutted in cross-examination. It also shows that, he did not prejudice to any worker, so his statement appears to be reliable. Now I want to see the legal position.

13. I relied on case laws: (i). Chairman, ONGC Vs. Shyamlal Chandra (2006) LLR 70 (SC) and Secretary, State of Karnataka and other Vs. Umadevi and others 2006 AIR 1806, in which, the following principles are laid down by the Hon'ble Supreme Court:-

(i). "The policy of 'ad-hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. The State Government is expected to function as a model employer".

(ii). "The employee should be made aware of the defect in his work and deficiency in his performance ---- Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".

(iii). A class of employment, which can only be called 'litigious employment' has risen like a phoenix seriously impairing the constitutional scheme -----The passing of orders for continuance tends to defeat the very Constitutional scheme of public employment".

14 The Hon'ble Supreme Court in case laws, State of Haryana & ors etc. Vs. Piara Singh & ors etc. AIR 1992 SC 2130 and State of Karnataka Vs. Uma Devi (3) AIR 2006 SC 1806, held that:-

(i). "The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad-hoc or temporary appointment to be made ------The appointment of regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad-hoc temporary employee".

(ii). "For regularisation of such employees consistent with its reservation policy and if a scheme is already framed the same may be made consistent without our observations -----If a casual labourer is continued for a fairly long spell-say two or three years – a presumption may arise that there is regular need for his services".

(iii). "There must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly ……..If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules".

15. In above case laws, following principles are also laid down :-

i. "All aspects of arbitrability will have to be decided by the Court seized of the suit or proceeding and cannot be left to the decision of the arbitrator".

ii. "The quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of S 2 (s) of the Act".

16. Case laws:-Yogender Pal Singh and others Vs. Union of India and others AIR 1987 SC 1015 and Employers in relation to the management of Bhowra Area No. XI of Ms BCCL, Dhanbad Vs. the Presiding Officer, Dhanbad W.P. (L) No. 2412 of 2002 dated 26.07.2012, in which Hon'ble Court laid down the following principles:-

i. "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state".

ii. No dependent of an employee of the State or its instrumentality is entitled to claim preference in the matter of on public employment on the basis of the service of his father/parent is no longer res integra in view of the specific provision contain in Part III of the Constitution of India and also laid down in the judgment delivered by the Hon'ble Supreme Court of India in number of cases.

17. Judging the present case in hand with the touch stone of the principles as mentioned above, my humble opinion is that, there is no employee and employer relation between the workers and Party No. 1 i.e. they are contract labourers. Union also failed to prove that, all the workers are the member of the union and also failed to prove that, any resolution passed by the union to take this matter before this Tribunal. On perusal of the records, it also appears that, my predecessor decided same type of case on 28.03.2014 in case No. CGIT/NGP/98/2007. It also appears that, some settlements taken between the Party No. 1 and R.M.M.S. Union, in which, Party No. 1 made a commitment to reappoint some workers on quality basis on some terms and conditions, but it also appears that, contractor did not pay any retrenchment compensation to the workmen in lieu of service rendered by them, but contractor is not a party in this case, so workers are not entitled for compensation. Hence, it is ordered:-

ORDER

The demand of the Union to regularize 73 numbers (as per list enclosed) of temporary contract labourers of M/s. Ambika Enterprises working in Bharveli Mines of MOIL, Balaghat Mines Post Bharveli Distt. Balaghat (MP) as permanent workers in the MOIL Company is not justified, valid and reasonable. The workmen are not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1110.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हट्टी गोल्ड माइन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 40/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-43012/11/2010 आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2010) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s Hutti Gold Mines Co. Ltd. and their workman, which was received by the Central Government on 13.06.2019

[No. L-43012/11/2010-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE – 560 022.

DATED : 04TH JUNE 2019

PRESENT : **Justice Smt. Rathnakala**

Presiding Officer

CR 40/2010

I Party

Sh. P. Ramesh,

S/o Sh. Mahanthappa Pattna Setty T,

No. 87, Hutti Gold Mines Co.Ltd.,

Hutti Raichur Distt.

II Party

The Executive Director,

Hutti Gold Mines Co. Ltd.,

Hutti PO-584115,

Lingasugur Taluk,

Raichur Distt.

Karnataka.

Appearance

Advocate for I Party	:	Mr. Muralidhara
Advocate for II Party	:	Mr. M.R.C Ravi

AWARD

The Central Government vide Order No.L-43012/11/2010 (IR(M)) dated 06.10.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of Management of Hutti Gold Mines Co. Ltd., Hutti Raichur Dist. Karnataka State in terminating the services of Sh. P. Ramesh S/o Sh. Mehantappa Pattan Setty vide their order dated 15.09.1998 is justified? To what relief the workman is entitled?"

1. The 1st Party workman claims that having been appointed as a General Labour on 06.05.1981, he was promoted to Grade of S-3 Operator; he met with an accident on 07.08.1997 and suffered fracture in his legs and was unable to move; at the same time his daughter was also not well, he had sent his leave application. The 2nd Party issued charge sheet cum enquiry notice on 15.01.1998 alleging that he remained unauthorizedly absent for 93 days from January to December 1997. He submitted his reply to the charge sheet but the Management initiated enquiry by appointing Enquiry Officer. The enquiry was held in contravention of the Principles of Natural Justice and the Provisions of the Certified Standing Orders of the Company. The Enquiry Officer gave his cryptic findings devoid of reasons. Even without waiting for his explanation to the Enquiry Report the Disciplinary Authority dismissed him from services vide order dated 15.09.1998. It is further claimed, that the Employee Association of the Company requested the Management to keep the dismissal order in abeyance till the case is reviewed by them. The 1st Party resumed work and was working

sincerely. All of a sudden on 10.04.2000, the Management issued an office order stating that in the year 1999 he absented for 55 days and his case does not deserve to be reviewed. Thus, the punishment order dated 15.09.1998 was given effect. He has not committed any misconduct under the Certified Standing Order. His reply to the charge sheet was not considered wherein he had explained the reasons for his absence. The punishment order is devoid of reasons and justifications. He is not gainfully employed since his dismissal.

2. In its detailed counter statement the 2nd Party contended that there is more than 10 years of delay in raising the dispute. The order of reference is beyond the scope of section 10 of the Industrial Dispute Act and is without Jurisdiction. The Domestic Enquiry was held in fair and proper manner. Even after keeping the punishment order in abeyance, on the request of the Union the 1st Party workman continued to remain absent continuously. He was habitually absenting from work which resulted in dislocation of work, loss of production and created bad precedent among the co-workers. Hence, the 2nd Party was constrained to implement the order of dismissal dated 15.09.1998 w.e.f. 10.04.2000. He did not appeal to the Appellate Authority. The dismissal order is legal and justified.

3. On the rival pleadings of the parties a Preliminary Issue regarding fairness of the Domestic Enquiry was framed, tried and adjudicated by upholding the fairness of the Domestic Enquiry.

4. Both the parties have addressed arguments apart from respective written arguments.

5. The validity of the procedure adopted by the Enquiry Officer having been upheld, now the 1st Party attacks on the Enquiry Findings. Though he does not dispute the period of his absence, he reasons out that his absence was beyond his control as he had met with an accident and his daughter was unwell.

6. It is noticed from the Enquiry Records that on his request to conclude the enquiry in one day, the Enquiry Officer held the preliminary hearing, received the management documents and enquired the CSE. During the enquiry by the Presenting Officer he admitted that he was absent from January 1997 to June 1997 for a period of 8 days and reasoned out that whenever he misses the bus he remained absent; he admitted that he has not applied for leave on those occasions. It is further admitted that he remained absent for 6 days during July and continuously absent between August to December 1997; the leave letter submitted by him to the management were marked as Ex M-5 and Ex M-6. When questioned why he did not take treatment in the Company Hospital he stated that, the police admitted him to the Hospital while he was unconscious and from there he was shifted to Miraj Hospital. He admitted that on two previous occasions he was unauthorizedly absent. His representative had stated that it is always good to get the leave sanctioned before going on leave. He undertakes to produce the documentary proof about taking treatment as outpatient in the Company Hospital. However, failed to comply his own undertaking. The Enquiry Officer submitted his report that the CSE had furnished documents about availing treatment in the outside Hospital but had failed to submit records about his treatment in the company Hospital. The 2nd show cause notice was issued to him; however the punishment order was kept in abeyance for review at the interference of the Union (EX M-7). On 10.04.2000 (Ex M-8) the dismissal order was passed by recording that he remained absent for 55 days in the year 1999 evincing that he has no interest to continue in the service.

7. Learned Counsel Sh. TRKP for the 2nd Party while challenging the reference of the dispute which is raised after almost one decade relies on the judgement of Apex Court in Nedungadi Bank Ltd., vs K. P. Madhavankutty (2000) 2 SCC 455: 2000 SCC (L & S) 283 at Pg.459, wherein 'the reference of a matter after lapse of seven years was observed as stale which cannot be a subject matter of reference under section 10 of the Industrial Dispute Act'. Learned Counsel further relies on the Judgement of L&T Komatsu Ltd vs N. Udaya Kumar reported in AIR 2007 SC (Supp) 1752, in which reinstatement of the workman who was unauthorisedly absent for 105 days in a period of 9 months, vide award of the Labour Court (confirmed by the Hon'ble High Court) was set aside. He further relies on the judgement of India United Mills Ltd., vs Rashtriya Mill Mazdoor Sangh (1959) 2 LLJ 120; and B.M.S Motor Service vs Workman (1955) 1 LLJ 597, which judgements upheld the major punishment in the cases of unauthorised absence.

8. As such the dismissal order of 1998 was given effect to in the year 2000. The reference order is not challenged by the 2nd Party before the appropriate forum on the ground of delay; they have promptly prosecuted their case before this Court. Hence, in the opinion of this Tribunal the matter cannot be thrown out at the threshold on the ground of delay.

9. As it can be noticed from the enquiry record the workman had submitted the medical records for taking treatment in the outside Hospital but had not produced records for availing treatment as an outpatient at the Company Hospital. His medical records were produced by the Management and marked as their documents only. The show cause notice dated 15.06.1998 is marked as Ex M–5 wherein they have quoted his service records and emphasized on his previous records wherein for the similar misconduct, twice he was warned and twice he was under suspension and for the similar reason he was not eligible for seven years for yearly increments and he is a habitual absentee, thereby causing dislocation of work and loss of production. Whether or not the 1st Party gave his reply to the said show cause notice cannot be made out from the records, he has not disputed these facts in the evidence adduced by him before this Tribunal after the Preliminary Issue was adjudicated. Under the circumstances, the necessary inference is, he is a habitual

absentee and his absence in the year 1997 and 1998 was not an isolated incident. In the circumstances I endorse the punishment order passed against the workman.

AWARD

The reference is rejected.

(Dictated, transcribed, corrected and signed by me on 04th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1111.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हट्टी गोल्ड माइन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 29/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.06.2019 को प्राप्त हुआ था।

[सं. एल-43011/2/2010 आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2010) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hutti Gold Mines Co. Ltd. and their workman, which was received by the Central Government on 13.06.2019

[No. L-43011/2/2010-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE – 560 022.

DATED : 06TH JUNE 2019

PRESENT : Justice Smt. Rathnakala

Presiding Officer

CR 29/2010

I Party

Shri. A.R. Ismail,
General Secretary,
AITUC (District Council),
Up-Stairs Saptagiri Complex,
K. C. Road,
BELLARY – 583101.

II Party

The Executive Director
Hutti Gold Mines Co. Ltd.,
Hutti PO, Karnataka,
Ligasugar Taluk,
Raichur -584115.

Appearance

Advocate for I Party : Mr. Muralidhara
Advocate for II Party : Mr. M.R.C Ram

AWARD

The Central Government vide Order No.L-43011/2/2010-IR(M) dated 03.08.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the Management of Hutti Gold Mines Co. Ltd., Hutti in terminating the services of Shri. Yenkoba, Token No. 1355 w.e.f. 10/03/2006 is justified? To what relief the workman is entitled?"

1. The 1st Party Trade Union has espoused the cause of Sh. Yenkoba who was working in the 2nd Party Mines and was dismissed from service on the allegation of theft. Before imposing the punishment order he was issued charge sheet, Domestic Enquiry was held and the Enquiry Officer had given his report that the charges alleged against the workman are proved.

2. The 1st Party contents that without waiting for his reply to the memo, charge sheet was issued. The charges were vague and indifferent; the enquiry was not held in a fair and proper manner; findings of enquiry were unjust and unreasonable; Disciplinary Authority has not applied its mind to the evidence on record, facts and circumstances of the case. He has been victimized by the Management. His blemish less past records were not considered before passing the punishment order.

3. The 2nd Party in its counter statement has denied all the allegations and justified its action.

The Preliminary Issue regarding fairness of the Domestic Enquiry was tried and adjudicated and was held vide order dated 30.10.2012 of this Tribunal that '*Domestic Enquiry held against the 1st Party by the 2nd Party is not fair and proper'*. The 2nd Party was permitted to prove the charges against the workman afresh. On that 2nd party examined 5 witnesses; one material object (stolen) was marked as Ex M-1. Documents Ex M-1 to M-10 was marked. The 1st Party workman gave rebuttal evidence as WW1. The 1st Party was receiving interim relief from the 2nd Party vide order of this Tribunal dated 17.10.2013 equivalent to the salary he was drawing as on the date of his termination.

4. The allegation against the workman was on 31.07.2005 at 7:30 pm, near the bungalow of Managing Director of the Company and old water tank he was found carrying,

a. old steel railings
b. U type angular, L type angular (2)
c. Steel pieces (totally 9 articles weighing 50 kgs),

which belonged to the Company; he was caught red-handed by the security guards of the Company. The 1st Party had given his explanation to his charge sheet that at the relevant time, having drunk and intoxicated he was resting near the old water tank; two strangers came there with the stolen properties and insisted him to assist them to carry the same; on his denial they threatened him; he agreed to carry a rod the security persons caught him, took him to the security Office and took his signature; he is not aware of whatever happened in his intoxicated condition.

5. Before this Tribunal the 1st witness examined for the Management was the security personnel who stated that, on that evening he observed three men hovering around the water tank, they picked up iron materials lying near the new water tank and were proceeding. He informed the matter to the Security Inspector Sh. Nagappa through Company's Wireless set; the Security Inspector came there in the jeep along with Sh. Thotegar and with Sh. Charles. When they attempted to catch the culprits two of them ran away leaving behind the iron materials and the 1st Party workman was caught. During the cross examination of MW-1, it emerged that 1st Party workman was not a stranger to him; he was not on patrol duty at that time and place. The iron materials left behind by the culprits was not seized under Mahazar.

6. The 2nd witness was the Security Inspector and he has stated that they produced the stolen property along with the 1st Party workman before Sh. Mallappa Shaft time keeper, who in turn checked the register, traced that the person brought is Sh. Yenkoba B No. 1355. They recorded the statement of Sh. Yenkoba sealed the iron pieces and complained the matter to the Manager. He identified the stolen property as No–1. During the cross examination he stated that MW–1/Security Guard was not provided with wireless set; he had sent the message from the post situated near the MD's Bungalow. When the raid party went near JSI Camp, Sh. Modin Saab saw and two other guards posted near MD Bungalow joined them and they were eight in number.

7. The 3rd witness was one among the security men who caught the 1st Party workman. As per his version during cross examination, in all they were 5 in number; the stolen property was not seized under Mahazar.

8. The 4th witness was the Driver of the jeep in which security personnels proceeded to the spot of offence. As per his version he parked the vehicle near the JSI Campus the security personnels alighted from the vehicle, returned with 1st Party workman and iron material.

9. The DGM secretary who was also the Chief Security Officer was the 5th witness. As per his statement when the 1st Party was caught and brought to the main gate of the Company, he went there and investigated the matter received the iron materials from the security guard and also their statement about the incident.

10. He produced the documents Ex M-1 to M-10 i.e., the complaint, the statement of witnesses, charge sheet, order of dismissal and the application given by the 1st Party dated 08.04.2008 seeking pardon. He admits the suggestion that the 1st Party is charged on the basis of the statements of the security personnels.

11. During his rebuttal evidence the 1st Party workman stated that, on that evening he had consumed alcohol, while on his way to home two strangers approached him holding materials in their hand. They were two security guards known to him, they took him to the jeep and then to the Security Office at the main gate. They alleged him of theft and forcibly took his signature on a paper and there after released him. He has not committed misconduct as alleged. He admits that a Police complaint is given in respect of the incident.

12. It is obvious that there is improvement in the case of the Management from the stage of charge sheet to the stage of evidence before this Tribunal. In the charge sheet, there is no reference to two strangers with whom 1st Party workman is said to be carrying Company property.

13. In the 1st Information Report given to the jurisdictional Police, also there is no reference to any 3rd persons/unknown culprits except the 1st Party workman. The Police complaint is lodged on 12.06.2005 (Ex M-13) in pursuance of the same charge sheet is filed for the offence under section 379 of IPC, in respect of theft of 12 kgs of iron material of value Rs. 100/-on the evening of 12.06.2005 against the accused

Sh. Yenkoba Hanumantha Dhodamani.

14. It is not logical to connect the charge sheet issued to the workman by the Management dated 05.08.2005 in respect of the incident of 31.07.2005 (Ex M-3). Whether these two charge sheets pertain to a same incident or different incident is not explained by the 2nd Party. This discrepancy within the prosecution case is not a minor fault that can be ignored. In both the cases the complainant is Sh. Basavaraj S/o Sh. Shankrappa Dhodamani Security Officer.

15. The burden is on the prosecution to prove the allegation against the 1st Party at the least on the parameter of '*principles of preponderance probability*'. Going by the version of the charge sheet the culprit must be carrying the iron articles which are marked before this Tribunal as MO-1. It is humanly impossible for a single person to carry all these articles which probably weighs more than 50 kgs by himself. Hence, without further probe the conclusion that flows is the charge is not proved by the 2nd Party, and it does call for interference by this Tribunal in exercise of the jurisdiction bestowed by section 11 of Industrial Dispute Act 1947.

AWARD

The reference is accepted. The action of the Management of Hutti Gold Mines Co. Ltd., in terminating the services of Sh. Yenkoba token No. 1355 w.e.f 10.03.2006 since, is not justified, same is set aside. The 2nd Party Management is directed to reinstate the workman to his original post with continuity of service and 30% of back wages. The Award must be complied by the Management within 60 days of publication of the Award in the Official gazette, failing which the monetary benefit will carry future interest at 8% per annum.

(Dictated, transcribed, corrected and signed by me on 06th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1112.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मनोहरपुर चिरिया ओर माइन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 65/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2019 को प्राप्त हुआ था।

[सं. एल-26011/16/1999-आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2000) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Manoharpur Chiria Ore Mine and their workman, which was received by the Central Government on 18.06.2019.

[No. L-26011/16/1999-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 65/ 2000

Employer in relation to the management of Manoharpur Chiria Ore Mine

AND.

Their workman.

Present: **Shri D.K.Singh**

Presiding Officer.

Appearances:

For the Employers :- Shri D.K.Verma, Advocate

For the workman. :- None

State : Jharkhand. Industry-Mines

Dated-30/05/2019

AWARD.

By order No. L-26011/16/1999-IR(M) dated 25/01/2000 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the management and contractor's in not paying wages to the contractor's workmen as per agreement of Steel Wages Board Award is justified? If not, to what relief the workmen are entitled?

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter one regd. notices was issued to the workmen but even then no one appeared on behalf of the workman. Moreover notice of the union is returned back with postal remarks " Not Known" Case is pending since long and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D.K.SINGH, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1113.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स श्री डी इंटीग्रेटेड सॉल्यूशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 88/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.06.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2013) of the Central Government Industrial Tribunal/Labour

Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Three D Integrated Solution Ltd. and other and their workman, which was received by the Central Government on 19.06.2019.

[No. Z-16025/4/2019-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, NEW DELHI.

ID No. 88/2013

Shri Sarajuddin Ali s/o. Shri Shamsher Ali,

C/o. Engineering General Karamchari Lal Jhanda Union,

M-714-15, Mangolpuri,

Delhi -110083. ……Workman/Claimant

Versus

1-M/s Three D Integrated Solution Ltd.

609-611, JMD Pacific Square Behind 32nd Miles Stone,

NH-8, Sector 15,

Gurgaon (Haryana).

2-M/s Airport Authority of India,

Indira Gandhi Terminal-III,

Palam, New Delhi. …….Management/Respondent

AWARD

This is a claim directly filed by the workman/claimant Sarajuddin Ali under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that he has been working as Senior Technician with the Management since 29/5/2010 and his last drawn wages were Rs.9000/-per month. He had been working with honesty and sincerity. The duty place of the workman was at IGI Airport Terminal-III and his entry pass for duty was upto 19/12/2011. Office of the Management had obtained the signatures of the workman on the application for entry pass but same was not issued to the workman despite repeated requests and visits. It is pleaded that the workman continued to go to the office but he was not provided with duty from 19/12/2011 till 4/6/2012 but on 4/6/2012 the workman/claimant was told that his name has been removed from company's record. Demand notice dated 4/6/2012 was sent to the Management through registered post but to no avail. Termination of the claimant from service on 4/6/2012 is illegal, unjust and against the provisions of law. The claimant is still unemployed since the date of his termination. The claimant had approached the Conciliation Officer but to no avail. Prayer has been made for reinstatement of the workman with full back wages and consequential benefits.

2. The Management No.1 contested the claim petition by filing written statement. While denying the allegations of the claimant, it has been alleged that the workman started absenting from duties without any intimation or permission w.e.f. 20/12/2011 and therefore, he was issued a letter dated 11/1/2012, informing him about his absence from duties w.e.f. 20/12/012 and advising him to report for duty but he did not report for duty. Another letter dated 18/1/2012 was issued to him, advising him to report for duty within 10 days, failing which it will be inferred that he was no longer interested to work with the Management. It is also alleged that at no point of time Management ever refused duties to the workman. It is further alleged that having absented from duties continuously w.e.f. 20/12/2011 without any intimation, the workman/claimant voluntarily abandoned his service and his continuous unauthorized absence from duty from 20./12/2011 constituted a gross misconduct. Prayer has been made for dismissal of the claim petition.

3. Management no.2 Airport Authority of India did not appear despite service of notice and hence case was proceeded ex-parte against it vide order dated 30./8/2013.

4. On the pleadings of the parties, following issues were framed on 30/8/2013 :-

(i) Whether claimant abandoned his service with M/s Three D Integrated Solutions Ltd.? If yes, its effect ?

(ii) Whether termination of service, if any, of the claimant amounts to retrenchment ?

(iii) Whether provisions of Industrial law were violated when services of the claimant were terminated by M/s Three D Integrated Solutions Ltd.?

(iv) Whether claimant is entitled to relief of reinstatement in the service of M/s Three D Integrated Solutions Ltd.?

5. In order to prove his case, the workman examined himself as WW1 & tendered his affidavit Ex.WW1/A and relied on documents Ex.WW/1 to Ex.WW1/5. On the other hand, the Management No.1 examined two witnesses namely Shri R.K. Srivastava, Deputy General Manager (HR) and Shri Rajeev Shokeen, Deputy Manager (HR), who filed their respective affidavits as Ex.MW1/A and Ex.MW2/A and they placed reliance on the documents Ex.MW1/1 (letter dated 11/1/2012) and Ex.MW1/2 (letter dated 18.1.2012).

6. I have heard Shri Abhinav Kumar, A/R for the workman./claimant and Shri K.K. Tyagi vice Shri Alok Bhasin, A/R for Management No.1. I have also gone through the record carefully. My findings on above issues are as follows.

Issue No.1 to 4 :-

7. All these issues being inter-related are taken up together and they can be disposed of conveniently by common discussion.

8. I may mention that affidavit Ex.WW1/A filed by the claimant is in line with the averments made in the claim petition. He has filed on record copy of the demand notice dated 4.6.2012 (Ex.WW1/1) sent to Management No.1 and its postal receipt as Ex.WW1/2; copy of reply thereto given by Management No.1 as Ex.WW1/3, whereas documents Ex.WW1/4 and Ex.WW1/5 relate to one Sultan Singh – claimant in another case. Perusal of these documents clearly proves relationship of employer-employee between the Management No.1 and the claimant herein and that the claimant falls within the definition of "workman" as provided under Section 2(S) of the Act.

9. From the evidence adduced on record it stands proved that claimant/workman was engaged as a Technician on 29th May, 2010 and his entry pass was valid upto 19/12/2011. Case of the claimant is that office of the Management had obtained the signatures of the workman on the application for entry pass but same was not issued to the workman despite repeated requests and visits. Though he continued to go to the office, however he was not provided with duty from 19/12/2011 till 4/6/2012 but on 4/6/2012 he was told that his name has been removed from company's record. On the other hand, case of the Management No.1 is that the workman started absenting from duties without any intimation or permission w.e.f. 20/12/2011 and therefore, he was issued letters dated 11/1/2012 and 18/1/2012 (ExMW1/1 and Ex.MW1/2), informing him about his absence from duties w.e.f. 20/12/012 and advising him to report for duty but he did not report for duty. While denying the suggestion that he started absenting himself from duty since 20/12/2011, claimant WW1 volunteered that he was attending to his duties daily but his entry pass was not issued to him. He also denied the suggestion about issuance/receipt of letters Ex.MW1/1 and Ex.MW1/2. MW2 Rajeev Shokeen –witness of the Management has admitted that the workman/claimant had moved application for issuance of entry pass. This witness clarified that entry pass is made on the basis of application on behalf of the workman to the Burearu of Civil Aviation Security but admitted that the Management had not issued any letter in writing to the workman to collect the entry pass.

10. As regards the version of the Management that the workman absented from duty without any intimation or permission w.e.f. 20/12/2011 and for that purpose the Management issued letters Ex.MW1/1 (dated 11/1/2012) and Ex.MW1/2 (dated 18/1/2012) to the claimant which were allegedly sent through courier, I may mention that onus to prove the same was upon the Management. Perusal of the record shows that the Management has not filed on record any acknowledgement/service report of the same. Moreover these letters do not bear any reference number of the office of the Management. It is also pertinent to mention here that the Management has not produced on record any document to show as to when entry pass of the workman/claimant which was valid upto 19/12/2011, was actually renewed/revalidated – whether it was before or after 11/1/2012 when the first warning letter Ex.MW1/1 followed by another warning letter dated 18/1/2012 (Ex.MW1/2) was allegedly issued by the Management but in these letters there is no mention whether entry pass of the claimant/workman stands renewed/revalidated, or not. Even these letters were not shown/put to the claimant in his cross examination for the purposes of confrontation. It seems that the Management has manufactured these documents Ex.MW1/1 and Ex.MW1/2 and the same are of no help to the case of the Management. It is fairly settled that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Testimony of the claimant that he was always called on in the office on every week but he was provided his duty from 19/12/2011 upto 4/6/20112 has gone unchallenged. The claimant has also filed on record his demand notice dated 4/6/2012 and its postal receipt as Ex.WW1/1 & Ex.WW1/2 respectively, from which it can be safely inferred that the claimant had no intention to abandon the job. In these facts and circumstances, this Tribunal has no hesitation to hold that the Management has failed to prove that it was the claimant who abandoned his service voluntarily.

11) Now the question arises for consideration is whether the dismissal/termination of the claimant from services w.e.f. 4/6/2012 is in violation of the provisions of the Act.

12) Admittedly the claimant worked regularly under Management No.1 as Technician from 29/5/2010 till 19/12/2011 when his entry pass expired. I have already held above that the Management has failed to prove that it was

the claimant who abandoned his service voluntarily. The claimant has pleaded and testified that his termination from service on 19/12/2011 and 4/6/2012 is illegal, unjust and against the law of land. MW2 Rajeev Shokeen – witness of the Management has admitted that no charge sheet was issued to the workman nor any action was taken against him for his continued absence and further that no termination letter was issued to the workman. Even no enquiry was conducted against the workma, It is fairly settled that if the termination of an employee is based on no inquiry, no charge-sheet and not by way of punishment, then it becomes a case of illegal retrenchment. As such, this Tribunal is of the considered view that action of the Management in disengaging/terminating the services of the claimant herein **amounts to retrenchment**.

13. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that any retrenchment compensation was paid to the claimant by the Management. There is also nothing on record to show that any notice ornotice pay was given by the Management prior to termination of the claimant herein. As such, the Management has violated the provisions of Section 25-F of the Act.

14) There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management Bank to be illegal and void under the law.

15) Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman w.e.f. 4/6/2012 is held to be illegal and void.

16) Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the Management since 29/5/2010. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman is of perennial and regular nature which fact is also admitted by the witness of the Management. The claimant has pleaded and testified that he is totally unemployed since his termination i.e. 14/6/2012.

17) The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the

onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

19. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

20. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

21. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and

that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

22. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management no.1. Award is passed accordingly against Management No.1.

Date : 07.05.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ.1114.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 25/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.06.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2015) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Airport Authority of India and their workman, which was received by the Central Government on 19.06.2019.

[No. Z-16025/4/2019-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1: NEW DELHI

ID No.25/2015

Shri Manoj Kumar ,
Working as driver in Airport Authority of India,
As represented by
Delhi Labour Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi-54.

…Workman

Versus

The Management of Airport Authority of India,

Through its Chairman,

Rajiv Gandhi Bhawan,

3rd Floor, C-Block,

Safdarjang Airport,

New Delhi 110003. ……Management

AWARD

This award shall decide a claim petition under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) filed directly by the claimant/workman with the averments that he had joined into the employment of Management w.e.f. 4.7.2008. He was taken in job on contract basis and was posted as driver at Safdarjang Airport. He was continuously and uninterruptedly discharging his services and raised an industrial dispute by giving a legal demand notice dated 17.12.2012 through his Union, seeking regularization to the post of Driver in proper pay scale and allowances. It is pleaded that on receipt of aforesaid notice, the Management as a counter blast terminated the services of the workman on 5/9/201 by verbally informing him not to come on duty but without giving any written letter/communication. Consequently, the workman filed a complaint under Section 33-A of the Act before the Conciliation Officer in December, 2013 but to no yield and ultimately the ALC/Conciliation Officer issued a certificate dated 29/9/2014. It is also pleaded that termination of his services is not only in violation of Section 33-A of the Act but is also in violation of Section 25-F, G and H of the Act as the workman was not given any prior notice or notice pay or service compensation. Action of the Management in terminating the service of the claimant amounts to unfair labour practice as provided in Section 2(ra) read with item No.5 of the Fifth Schedule of the ID Act. It is further pleaded that the workman is totally unemployed since the date of his illegal termination. He has prayed for his reinstatement into service with full back wages & all consequential benefits as well as cost of litigation as provided under Section 11(7) of the Act.

2. The statement of claim has been resisted by the Management who filed written statement and took preliminary objections inter alia that there is no employer-employee between the workman/claimant and the Management inasmuch as the workman was neither appointed by the Management, nor was its direct employee. It is alleged that the Management had engaged the services of the contractor M/s Good Housekeeping, WZ-519, Raj Nagar-I, Palam Colony, New Delhi through agreement. It is also alleged that the claim petition is not maintainable as the claimant has failed to implead the contractor M/s Good Housekeeping. The workman was engaged by the contractor for his services, if any and salary of the workman was paid by the contractor M/s Good Housekeeping and services of the workman were terminated by the contractor. As such, contractor/s were solely responsible for employment of the workman, payment of their wages and other service benefits. It is stated that the workmen/claimant never attained the status of permanent employee and as such he was not entitled to regularization because there was no employer-employee relationship between the Management and claimant. Prayer has been made that claim petition is not maintainable and as such the claimant is not entitled to any relief.

3. The claimant filed rejoinder, reiterating his own case as set up in the claim petition and denied the allegations as made in the written statement. It has been alleged that it was the Management of Airport Authority of India only who was supervising the services rendered by the claimant, though he was taken on job on contract basis. Even otherwise the Management is a principal employer and the termination of the claimant is an act of victimization of the workman/claimant.

4. On the pleadings of the parties, following issues were framed on 24/8/2015 :-

1) Whether termination of the workman is illegal and against the principle of natural justice ?

2) Whether there exists relationship of employee and employer between the claimant and the Management ?

5. The workman /claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A & relied on documents Ex.WW1/1 to Ex.WW1/8. On the other hand, the Management examined one Shri K.K.Gautam. Jt. General Manager (Tech.) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/8.

6. I have heard Shri Rajeev Aggarwal, A/R for the claimant and Shri Sunil Dutt, A/R on behalf of the Management and have also gone through the records carefully. My findings on above issues are as follows.

Issue No.1 and 2 :-

7. Both these issues are taken up together as the same can be disposed of by common discussion.

8. At the outset I may mention that claim of the workman/claimant is that he was working on contract basis under Airport Authority of India, whereas it was submitted on behalf of the Management that the claimant/workman was/is in fact employee of M/s Good Housekeeping and as such there does not exist any relationship of employer-employee between the Management and claimant herein. Testimony of the claimant is in line with the averments made in the claim petition. He has filed on record various documents viz. Ex.WW1/1 – copy of complaint under Section 33-A of the Act;

copy of its reply filed on behalf of Management Airport Authority of India as Ex.WW1/2; copy of the rejoinder thereto as Ex.WW1/3; copy of legal demand notice dated 17/12/2012 as Ex.WW1/4 and its postal receipt as Ex.WW1/5; Entry permit Card issued by the Management as Ex.WW1/6; copies of statements showing Overtime Allowance payable/paid to the claimant pertaining to the period January, 2011 to October, 2012 as Ex.WW1/7 (colly.-19 pages) duty roaster of the drivers including the workman herein for the period from 26/6/2011 to 8/.12/2012 as Ex.WW1/8 (colly. -25 pages), issued and signed by Shri R.N. Prajapati, Dy.General Manager (Technical), AAI, Safdarjang Airport, New Delhi.

9. MW1 – Shri KK Gautam in his testimony has deposed that there is no employer-employee relationship between the claimant and Management as the workman was never appointed by the Management and was never the direct employee of Airport Authority of India. This witness filed on record copies of letters relating to award of contract/renewal of contract by the Management in favour of M/s Good House Keeping, New Delhi for providing **Facilitation Personnel/skilled persons for driving duty on annual basis** during the period from 1/10/2011 to 3/4/2015, as Ex.,MW1/1 to Ex.MW1/15. However, from these documents it can not be inferred that the claimant was working under M/s Good House Keeping, New Delhi. On the contrary, perusal of document Ex.WW1/8 (colly.) shows that there was direct control and supervision over the work of the claimant/workman herein and that is why duty roaster of the workman used to be prepared by officers/officials of Airport Authority of India.

10. Even if it is admitted that the claimant was working with the Management/Airport Authority through M/s Good House Keeping to whom contract/s were awarded and renewed from time to time, in that eventuality also, control and supervision over the work of the claimant/workman herein was that of the principal employer Airport Authority of India. Moreover, it is apparent from documents Ex.,MW1/1 to Ex.MW1/15 that the workers including the claimant were hired by Airport Authority of India through the contractor M/s Good Housekeeping for plying its vehicles. There is nothing on record to suggest that the Management had awarded contract to M/s Good Housekeeping for completion of any project or that the said contractor himself was the transporter and he provided the Management Airport Authority of India the vehicles alongwith the driver/s.

11. It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

12. Constitution Bench of Hon'ble Supreme Court in the celebrated case of Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1 notices the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

> "107. An analysis of the cases, discussed above, shows that they fall in three classes :
>
> (i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.
>
> (ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.
>
> (iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

13. In the case of Management of Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013), similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

14. I may mention that situation in the instant case is not distinct. It is evident from the evidence adduced on record that the contract awarded to M/s Good House Keeping was for supply of workforce/manpower to the Management Airport Authority of India for plying the cars owned/belonging to the Management. Even control and supervision over the work of the claimant/workman was that of the Management. The job of driver/s is delicate. MW1 Shri KK Gautam has admitted that the workman joined his duty as a driver w.e.f.4/7/2008. The Management has not filed on record any

document to show that there was any agreement between the Management and M/s Good Housekeeping in the year 2008. MW1 has also admitted that the Management has not filed on record any document to show that the workman/claimant as deployed by M/s Good Housekeeping to the Management. Thus, it emerges from the record that the workman/claimant had not been hired in connection with the work of a contractor rather he had been hired by the contractor for the work of the Management, that is to say for plying the vehicles of the Management/Airport Authority of India. This is indicative of the fact that contract/s between the Management and M/s Good Housekeeping was a sham and mere camouflage so as to deny relationship of employer and employee between it and the claimant herein. It is manifest from the evidence adduced on record that the workman had been working regularly without any breaks since 4/7/2008 till 5/7/2013 when his services were terminated. As such, this Tribunal has no hesitation to hold that there existed relationship of employer –employee between the Management/Airport Authority of India and the workman/ claimant herein.

15. It is the case of the claimant that his services were terminated without issuing any notice or without any notice pay/compensation. MW1 – KK Gautam witness of the Management while admitting that no retrenchment compensation has been paid to the claimant has volunteered that he was not their employee. He admitted that no memo or charge sheet was issued to the claimant. This impliedly shows that no notice or compensation in lieu of notice period was given to the claimant by the Management and as such termination of the claimant/workman by the Management was in violation of provisions of Section 25-F of the Act. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

16. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

17. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

18. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman w.e.f. 5/9/2013 is held to be illegal and void.

19. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he continuously worked with the Management from 4/7/2008 to 5/9/2013, has gone unrebutted. Even he was paid over time allowance for the overtime duty performed by him. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as driver is considered to be of perennial and regular nature. Though claimant has pleaded and testified that he is totally unemployed since his termination on 5/9/2013. No evidence to the contrary has been adduced by the Management. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be regular gainful employment of the claimant/workman herein.

20. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

21. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

22. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

23. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.***"**

24. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.
>
> Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

25. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 60 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management. The claimant/workman is also granted litigation costs of Rs.10,000/-(Rupees Ten Thousand only) as provided under Section 11(7) of the Act and same shall also be paid by the Management. Award is passed accordingly in favour of the claimant and against the Management.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 08.05.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1115.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.06.2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर-(एम)]

डी०के० हिमांशु, अवर सचिव

New Delhi, the 20th June, 2019

S.O. 1115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2015) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Airport Authority of India and their workman, which was received by the Central Government on 19.06.2019.

[No. Z-16025/4/2019-IR(M)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, NEW DELHI

ID No.26/2015

Shri Kuldeep Singh ,
Working as driver in Airport Authority of India,
As represented by
Delhi Labour Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi-54.

…Workman

Versus

The Management of Airport Authority of India,
Through its Chairman,
Rajiv Gandhi Bhawan,
3rd Floor, C-Block,
Safdarjang Airport,
New Delhi 110003. ……Management

AWARD

This award shall decide a claim petition under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) filed directly by the claimant/workman with the averments that he had joined into the employment of Management w.e.f. 8/4/2010 as driver. He was taken in job on contract basis and was posted as driver at Safdarjang Airport. He was continuously and uninterruptedly discharging his services and raised an industrial dispute by giving a legal demand notice dated 17/12/2012 through his Union, seeking regularization to the post of Driver in proper pay scale and allowances. It is pleaded that on receipt of aforesaid notice, the Management as a counter blast terminated the services of the workman w.e.f. 28/2/2013 by verbally informing him not to come on duty but without giving any written letter/communication. Consequently, the workman filed a complaint under Section 33-A of the Act before the Conciliation Officer in December, 2013 but to no yield and ultimately the ALC/Conciliation Officer issued a certificate dated 29/9/2014, copy of which has been annexed as Annexure-A. It is also pleaded that termination of his services is not only in violation of Section 33-A of the Act but is also in violation of Section 25-F, G and H of the Act as the workman was not given any prior notice or notice pay or service compensation. Action of the Management in terminating the service of the claimant amounts to unfair labour practice as provided in Section 2(ra) read with item No.5 of the Fifth Schedule of the ID Act. It is further pleaded that the workman is totally unemployed since the date of his illegal termination. He has prayed for his reinstatement into service with full back wages & all consequential benefits as well as cost of litigation as provided under Section 11(7) of the Act.

2. The statement of claim has been resisted by the Management who filed written statement and took preliminary objections inter alia that there is no employer-employee between the workman/claimant and the Management inasmuch as the workman was neither appointed by the Management, nor was its direct employee. It is alleged that the Management had engaged the services of the contractor M/s Good Housekeeping, WZ-519, Raj Nagar-I, Palam Colony, New Delhi through agreement. It is also alleged that the claim petition is not maintainable as the claimant has failed to implead the contractor M/s Good Housekeeping. The workman was engaged by the contractor for his services, if any and salary of the workman was paid by the contractor M/s Good Housekeeping and services of the workman were terminated by the contractor. As such, contractor/s were solely responsible for employment of the workman, payment of their wages and other service benefits. It is stated that the workmen/claimant never attained the status of permanent employee and as such he was not entitled to regularization because there was no employer-employee relationship between the Management and claimant. Prayer has been made that claim petition is not maintainable and as such the claimant is not entitled to any relief.

3. The claimant filed rejoinder, reiterating his own case as set up in the claim petition and denied the allegations as made in the written statement. It has been alleged that the workman was posted at Safdarjung Airport on the post of driver and his work was being supervised only by the Management of Airport Authority of India Even otherwise the Management is a principal employer and the termination of the claimant is an act of victimization of the workman/claimant.

4. On the pleadings of the parties, following issues were framed on 24/8/2015 :-

1) Whether termination of the workman is illegal and against the principle of natural justice ?

2) Whether there exists relationship of employee and employer between the claimant and the Management ?

5. The workman/claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A & relied on documents Ex.WW1/1 to Ex.WW1/18. On the other hand, the Management examined one Shri K.K.Gautam. Jt. General Manager (Tech.) as MW1 who filed his affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/8.

6. I have heard Shri Rajeev Aggarwal, A/R for the claimant and Shri Sunil Dutt, A/R on behalf of the Management and have also gone through the records carefully. My findings on above issues are as follows.

Issue No.1 and 2 :-

7. Both these issues are taken up together as the same can be disposed of by common discussion.

8. At the outset I may mention that claim of the workman/claimant is that he was working on contract basis under Airport Authority of India, whereas it was submitted on behalf of the Management that the claimant/workman was/is in fact employee of M/s Good Housekeeping and as such there does not exist any relationship of employer-employee between the Management and claimant herein. Testimony of the claimant is in line with the averments made in the claim petition. He has filed on record various documents viz. Ex.WW1/1 – copy of legal demand notice dated 7/10/2013 as Ex.WW1/1 and its postal receipt as Ex.WW1/2; copy of statement of claim filed before Conciliation Officer as Ex.WW1/3; copy of its reply filed on behalf of Management Airport Authority of India as Ex.WW1/4; copy of the rejoinder thereto as Ex.WW1/5; copy of legal demand notice dated 17/12/2012 as Ex.WW1/6 and its postal receipt as Ex.WW1/7; Entry permit Cards issued by the Management as Ex.WW1/8 & Ex.WW1/11; copies of visitor's pass issued by Lok Sabha Secretariat as Ex.WW1/9 & Ex.WW1/10; copy of application form submitted by the claimant (duly recommended by General Manager of Airport Authority of India to the Ministry of Home Affairs, for issuance of temporary pass; copies of office notes Ex.WW1/13 and Ex.WW1/4 for providing seat covers and one set of seat towels as well as one perfume bottle to the staff car driver Kuldeep Singh; copy of certificate issued by Joint Secretary to the Ministry of Civil Aviation, about the work and conduct of the claimant; statements/claims of Overtime Allowance payable to the claimant pertaining to the period January, 2011 to October, 2012 as Ex.WW1/16 (colly.); duty roaster of the drivers including the workman herein for the period from 26/6/2011 to 8/.12/2012 as Ex.WW1/17 (colly.) issued and signed by Shri R.N. Prajapati, Dy.General Manager (Technical), AAI, Safdarjang Airport, New Delhi; and copy of reference order dated 18/2/2015 in respect of industrial dispute concerning non-regularization of the claimant/workman as Ex.WW1/18.

9. MW1 – Shri KK Gautam in his testimony has deposed that there is no employer-employee relationship between the claimant and Management as the workman was never appointed by the Management and was never the direct employee of Airport Authority of India. This witness filed on record copies of letters relating to award of contract/renewal of contract by the Management in favour of M/s Good House Keeping, New Delhi for providing **Facilitation Personnel/skilled persons for driving duty on annual basis** during the period from 1/10/2011 to 3/4/2015, as Ex.,MW1/1 to Ex.MW1/15. However, from these documents it can not be inferred that the claimant was working under M/s Good House Keeping, New Delhi. On the contrary, perusal of documents Ex.WW1/16 and Ex.WW1/17 (colly.) shows that there was direct control and supervision by the Management over the work of the claimant/workman herein and that is why duty roaster of the workman used to be prepared by officers/officials of Airport Authority of India.

10. Even if it is admitted that the claimant was working with the Management/Airport Authority through M/s Good House Keeping to whom contract/s were awarded and renewed from time to time, in that eventuality also, control and supervision over the work of the claimant/workman herein was that of the principal employer Airport Authority of India. Moreover, it is apparent from documents Ex.,MW1/1 to Ex.MW1/15 that the workers including the claimant were hired by Airport Authority of India through the contractor M/s Good Housekeeping for plying its vehicles. There is nothing on record to suggest that the Management had awarded contract to M/s Good Housekeeping for completion of any project or that the said contractor himself was the transporter and he provided the Management Airport Authority of India the vehicles alongwith the driver/s. On the other hand, documents Ex.WW1/13 and Ex.WW1/4 are indiacative of the fact that in November, 2011 the claimant was doing duty as staff car driver of vehicle No.DL3-C-AY-3601 owned by Airport Authority of India which was attached to Jt.Secretary (P) of Ministry of Civil Aviation, Govt. of India, New Delhi.

11. It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

12. Constitution Bench of Hon'ble Supreme Court in the celebrated case of **Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1** noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

"107. An analysis of the cases, discussed above, shows that they fall in three classes :

(i) Where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered

abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

13. In the case of Management of **Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013)**, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

14. I may mention that situation in the instant case is not distinct. It is evident from the evidence adduced on record that the contract awarded to M/s Good House Keeping was for supply of workforce/manpower to the Management Airport Authority of India for plying the cars owned/belonging to the Management. Even control and supervision over the work of the claimant/workman was that of the Management. The job of driver/s is delicate. MW1 Shri KK Gautam has admitted that the workman joined his duty as a driver w.e.f. 8/4/2010. The Management has not filed on record any document to show that the claimant was being paid wages and other facilities by the contractor M/s Good Housekeeping . MW1 has also admitted that the Management has not filed on record any document to show that the workman/claimant was deployed by M/s Good Housekeeping to the Management. Thus, it emerges from the record that the workman/claimant had not been hired in connection with the work of a contractor rather he had been hired by the contractor for the work of the Management, that is to say for plying the vehicles of the Management/Airport Authority of India. This is indicative of the fact that contract/s between the Management and M/s Good Housekeeping was a sham and mere camouflage so as to deny relationship of employer and employee between it and the claimant herein. It is manifest from the evidence adduced on record that the workman had been working regularly without any breaks from 8/4/2010 till 27/2/2013 & thereafter his services were terminated. As such, this Tribunal has no hesitation to hold that there existed relationship of employer–employee between the Management/Airport Authority of India and the workman/ claimant herein.

15. It is the case of the claimant that his services were terminated without issuing any notice or without any notice pay/compensation. MW1 – KK Gautam witness of the Management while admitting that no retrenchment compensation has been paid to the claimant has volunteered that he was not their employee. He admitted that no memo or charge sheet was issued to the claimant. This impliedly shows that no notice or compensation in lieu of notice period was given to the claimant by the Management and as such termination of the claimant/workman by the Management was in violation of provisions of Section 25-F of the Act. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

16. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

17. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

18. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman w.e.f. 28/2/2013 is held to be illegal and void.

19. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he continuously worked with the Management from 4/7/2008 to 27/2/2013, has gone unrebutted. Even he was paid over time allowance for the overtime duty performed by him. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as driver is considered to be of perennial and regular nature. Though claimant has pleaded and testified that he is totally unemployed since his termination on 28/2/2013. No evidence to the contrary has been adduced by the Management. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be regular gainful employment of the claimant/workman herein.

20- The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> "The propositions which can be culled out from the aforementioned judgments are :
>
> i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

21. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/ employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

22. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

23. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors

like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.***"**

24. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

25. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 60 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management. The claimant/workman is also granted litigation costs of Rs.10,000/-(Rupees Ten Thousand only) as provided under Section 11(7) of the Act and same shall also be paid by the Management. Award is passed accordingly in favour of the claimant and against the Management.

Date : 07.05.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ.1116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 33.ए के अनुसरण में, केन्द्रीय सरकार *मैसर्स* कमबाता एवीऐशन प्राइवेट *लिमिटेड* के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न.2, दिल्ली के पंचाट (संदर्भ संख्याः शिकायत नं. 03/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को *03/06/2019* को प्राप्त हुआ था ।

[सं. एल.–20013/02/2019–आई.आर.(सीएम-1)]

एस.सी.राय, अनुभाग अधिकारी

New Delhi, the 20th June, 2019

S.O. 1116.—In pursuance of Section 33 A of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, New Delhi (Ref. Complaint Case No. 03/2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. Cambata Aviation Pvt. Limited and their workmen, which was received by the Central Government on 03.06.2019.

[No. L-20013/02/2019-IR(CM-I)]

S.C. RAY, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

COMPLAINT CASE NO. 03/2013

Date of Passing Award-29th April, 2019.

Between:

Shri Jasbir Singh, …Workman
S/o. Shri Hari Singh,
K-445D, Street No. 12,
Mahipalpur Extension
New Delhi-110037.

Versus

The management of …Management
M/s. Cambata Aviation Pvt. Ltd.,
9/9A, 3rd Floor, Vasant Square Mall,
Vasant Kunj,
New Delhi-110037.

Appearances:-

Claimant in person, …For the Workman.
(Advocate)

None for the management, …For the Management.
(Advocate)

AWARD

This is a complaint filed by the workman u/s 33A of the ID Act 1947, alleging change of service condition by the respondent/management during Pendency of the Industrial Dispute between him and the management.

The workman Jasbir Singh claim himself to be a protected workman being the office bearer of Cambata Aviation Karamchari Union (Regd.). (herein after referred to as the Union). The respondent is the management of M/s. Cambata Aviation Pvt. Ltd.. On behalf of the Union demanding several service benefits of the Union Members Id. No. 122/2012 was filed and pending before this tribunal. The management in order to

satisfy its vengeance, during the pendency of the said Industrial Dispute on 09.08.13 passed an order terminating the service of the workman w.e.f. 26.08.13. Before doing so management did not take the permission of the Tribunal as provided u/s 33(3) of the ID Act. The workman has thus, pleaded that for want of such permission the order of termination passed against him is void-ab-initio, and the workman is deemed to be in service on the date of termination and thereafter. It has also been pleaded by the workman that the management while passing the order of termination had not followed the principle of first come last go in compliance of the provision of section 25(G) of the ID Act 1947. Not only that the workman is a protected workman and the provisions of chapter V-B of the ID Act squarely apply to him. But the management in gross violation of the statutory provision passed the order of termination. In the capacity of the Vice President of Cambata Aviation Karmachari Union he was raising demand with the management for payment of Dearness Allowance and other Variable Allowance to the fellow workers. Being aggrieved the management terminated his service illegally. Hence, by filing the present application he has prayed for setting aside the order of termination and reinstatement in service with continuity of service benefit, full back wages and all other consequential benefits alongwith the litigation expenses.

The management being noticed appeared and filed WS denying all the allegations leveled by the workman. It has been stated in the WS that the workman Jasbir Singh was initially employed as Assistant Supervisor on probation and subsequently in April 1996 he was confirmed in the said post. Thereafter he was promoted to the post of supervisor and again as duty officer by office order dated 01.05.1997 and 15.10.2001 respectively. His last drawn basic salary was Rs. 20,588/-and gross salary was Rs. 34,731/-per month. As such he is not a workman as defined u/s 2(S) of the ID Act. While denying the plea of the workman that he is a protected workman, the management has stated that as per the job profile the workman was discharging the job of a supervisor and was a White collar Staff. From the beginning he was an in disciplined employee and many cases are pending against him individually. In the past, he was issued numerous interoffice communication for his alleged act of omission and commission. His order of termination was in terms of the contract of appointment and for the illegal activities exhibited by him. He was justifiably terminated from service. Neither he is entitled to the relief of reinstatement nor the litigation expenses as prayed by him.

Considering the pleadings of the parties by order dated 02.09.2014 following issues were framed for consideration.

1. Whether claimant is not a workman within the meaning of section 2(s) of the Industrial disputes, Act 1947? If so its effect?
2. Whether the workman was a protected workman at the time of the termination of his services? If so its effects?
3. Whether service conditions of the claimant were altered in violation of provisions of section 33 of the Industrial Disputes Act, 1947? If so its effects?
4. Whether the claimant is entitled to relief of reinstatement in service with continuity of services, full back wages and all other consequential benefits as per allegation mentioned in his claim? If so its effects?

The complainant/workman examined himself as WW1 and proved certain documents in the series of WW1/1 to WW1/11. The documents include his initial appointment letter the letter of confirmation in service letter, of promotion dated 01.05.1997 to the post of supervisor, the promotion order, dated 15th Oct, 2001 as duty officer the order passed by the Assistant Labour Commissioner dated 02.12.2013 directing the management to recognize 14 of the officer bearers of the union as protected workman, the letter written by the complainant's union to the management furnishing a list of the office bearers to be recognized as protected workman the order of termination passed by the management against the complainant's on 09. Aug.2013 received by him under protest the letter of the workman to the Chief Operating Officer alleging unfair labour practice for termination of the protected workman, the list of the persons in Cambata Aviation occupying the position of the management in which the name of the present complainant is not included etc. He has also filed the list showing the category of white collar and blue collar employees, the order passed by the Hon'ble High Court of Delhi passed in WPC No. 332/2014 and 326/2014 under which the order of the Assistant Labour Commissioner declaring 14 members of the Union as protected workman was challenged but the Hon'ble High Court upheld the order of the Assistant

Labour Commissioner. The workman has also filed order of the Hon'ble High Court Delhi in LPA No. 456/2015 and Batch cases in which the order passed in WPC 332/2014 was challenged but dismissed. The management, though had appeared at the beginning of the proceeding remained absent during the later part of this proceeding, and as such could not cross-examine the claimant witness nor any evidence was adduced on behalf of the management.

FINDINGS

ISSUE No. 1and 2

These 2 issues being interlinked have been taken up for consideration together. The admitted facts are that the present complainant was appointed on probation as an assistant supervisor with the management on 01st October, 1995 and was confirmed in the post on 1.04.1996. It is also admitted that by order dated 01.05.1997 the management promoted the complainant as supervisor with basic salary of Rs. 5750/-. On 15th Oct 2001 he was promoted to the post of Duty Officer w.ef. 01. Oct 2001 on a basic salary of Rs. 8590/-. Till the date of alleged termination he was working in the post of said duty officer. It is also not disputed by the management that the complainant was the office bearer of Cambata Aviation Karmachari Union (Regd.). This is proved through the documents marked by the workman as Exhibit WW1/1 to WW1/4 tendered by him during his examination as a witness. It is also not disputed that there was an Industrial Dispute pending between Cambata Aviation Karmachari Union and the Management of Cambata Aviation Registered as ID No. 122/2012 being referred by the Appropriate Government for adjudication of various demands influencing the service condition of the members of that Union.

Whereas the complainant has challenged the termination order passed by the management against him on two grounds i.e. for the pendency of the Industrial Dispute and want of prior permission of the tribunal and also for he being a protected workman such order of termination cannot be passed by the management, the management in the Ws has taken objection to both the grounds. It has stated that in order to be a protected workman the complainant need to be a member of the workmen union. He being a duty officer discharging the work of the supervisor cannot be termed as a workman as defined u/s. 2(S) of the ID Act. Unless he is a workman cannot become a member of the Union to be elected as an officer bearer. The management has also taken a further stand that the workman was never declared as a protected workman. Such a declaration was made at a much later point of time i.e. in the year 2014 when this compliant has already been made. On this ground management has prayed for dismissal of the complaint.

To answer this issue it is primarily required to examine if the claimant falls under the category of workman defined u/s 2(S)of the ID Act. The specific stand of the management taken in the written statement is that at the time of allege termination the complainant was drawing basic salary of Rs. 20588/-per month and his gross salary Rs. 34731/-. Since his salary is more than the maximum mensem salary of a workman prescribed under the ID Act, he is not a workman to be a member of the Union. The workman while adducing evidence as WW1 has admitted that his last drawn salary was 34181/-. But his specific stand is that his gross salary includes various allowances but doesn't exceed mensem salary of a workman prescribed under the statute. This testified statement of the workman has not been disproved by the management either by oral or documentary evidence. There is also no evidence to take a contrary view to the statement made by the workman. Now it is to be seen if the workman was discharging the function of managerial nature to disqualify himself to come under the fold of the definition of the workman. A careful reading of the provisions of section 2(S) of the ID act 1947 gives an impression that any person skilled or unskilled including apprentice employed in any industry shall be termed as a workman but doesn't include any such persons who being employed in a supervisory capacity draw wages exceeding Rs. 10,000/-per mensem or exercises either by the nature of the duty attached to the office or by reasons of the power vested on him functions mainly of a managerial nature. Hence, it is predominantly clear from the wordings of the provision that a person though employed in a supervisory capacity if draway mensem salary of Rs. 10,000/-or less shall fall under the definition of workman as defined u/s 2(s) of the ID act. In this case the complainant has admitted that initially he was appointed as a Assistant Supervisor and subsequently promoted to the post of supervisor and duty officer. His last promotion as duty officer was carrying basic salary of Rs. 8590/-per month alongwith DA/VDA applicable from time to time. Thus, the workman argued that his designation as duty officer shall not deprive him of being treated as a workman since his salary per mensem was

less than 10000/-though he was working in a supervisory capacity. This contention of the complainant sounds convincing in absence of evidence to be contrary. On the other hand the workman has filed a document which is in the nature of list of employees of the management occupying managerial post and the name of the present complainant Jasbir Singh doesn't find place in the said list. Hence it is concluded that the complainant was a workman and in such capacity he was the office bearer of Cambata Aviation Karmachari Union.

While examining the other claim of the complainant that being a protected workman his service should not have been terminated by the management and the order of termination being illegal he should be deemed to have been in service needs consideration, it is necessary to examine the provision of law covering the area. Protected workman has been defined in Rule 61 of the ID (Central) Rules 1957, wherein it is provided that every registered trade union connected with an industrial establishment to which the Act applies shall communicate to the employer before 30th April every year the names and addresses of such of the officers of the Union, who are employed in that establishment and who, in the opinion of the union should be recognized as protected workmen and any change in the incumbency of any such officer shall be communicated to the employer by the Union within 15 days of such change. In response thereto the employers shall subject to limits of number of workman to be recognized as protected workmen, shall recognize such workmen to be protected workmen for the purpose of subsection (3) of section 33 of ID act and communicate the same to the union in writing within 15 days of receipt of information from the trade union and the life of such list of protected workmen would be 12 months from the date of communication.

In this case, the complainant in his pleading has alleged that a list of 15 workmen was submitted to the management requesting to recognize them as protected workmen. The list has been proved as Exhibit WW1/6. But the management took no action on the same which compelled the Union to file an application before the Assistant Labour Commissioner (Central) New Delhi. The said Assistant Labour Commissioner on 02.12.13 passed an order taking into consideration the total No. of workmen registered as members of the Union, and the no. of Registered Trade Union. The said order has marked as Ww1/5 by the workman. In the said order the Assistant Labour Commissioner passed a direction that out of the list of 15 workmen submitted by Cambata Aviation Karamchari Union 14 should be treated as protected workmen. The complainant has stated that on the next date of the order i.e. on 03.12.13 the list of 14 such workmen including the present complainant was sent to the management for recognition. But the management with an ulterior intention did not take any action and referred the matter to the Regional Labour Commissioner. Not only that the management while filing WPC 332/2014 challenged the order dated 02.12.13 passed by the Assistant Labour Commissioner but the Hon'ble High Court of Delhi dismissed the writ application conforming the order passed by the Assistant Labour Commissioner. Though this order was passed on 21.04.2014 the management again challenged the same by filing LPA No. 465/2014. The attempt of the management was aimed at buying time and not declaring the present complainant as a protected workman to facilitate taking punitive action against him.

On behalf of the complainant it was argued that the order of the Assistant Labour Commissioner dated 02.12.13 was later on confirmed by the Hon'ble High Court of Delhi and was never suspended or stayed by any order of the court. This clearly shows that when Assistant Labour Commissioner directed that 14 persons of the Union be declared as protected workmen and name of the present complainant was listed in the list, and as such the action of the management in dismissing him from service is illegal and in gross violation of the provisions of section 33(2)(b) of the ID Act.

But this argument of the complainant is not accepted since there is absolutely no document on record to believe that following the order dated 2nd December 2013 passed by the Assistant Labour Commissioner to recognize 14 persons of the Camabata Aviation Karamchari Union as workmen a list was submitted to the management which included the name of the present complainant. At no point of time dispute has been raised that the list of protected workmen was prepared in the year 2014 having validity for 12 months. Hence, it is concluded that on the alleged date of termination the present complainant was not designated as a protected workman of the union. But at the same time it is held on the basis of the documents available on record the complainant was a workman of Cambata Aviation Karamchari Union which was litigating against the management in Id No. 122/2012 wherein dispute was raised relating to payment of DA and VDA etc to the workman. It is not disputed that Id. No. 122/2012 was pending on the alleged date of termination order dated

09.08.2013 passed against the complainant, and the same clearly violates the provision of law laid u/s 33(2)(B) of the Id Act as the management had not obtained prior permission of this tribunal before passing the order. These two issues are accordingly answered.

ISSUE No. 3 and 4

These two issues are also interdependent and taken up for consideration together. The management has admitted that before passing the order of termination no prior approval from the tribunal was taken since the complainant was neither the workman nor a protected workman. While answering issue No.1 it has been held that the complainant was a workman coming under the fold of the definition u/s 2(s) of the Id Act. The provision of law laid u/s 33(2)(b) of the Id. Act clearly provides that during the pendency of any such proceeding in respect of industrial dispute the employer may alter the service condition of the workman in regard to any matter not connected with the dispute or for any misconduct not in connected with dispute. Admittedly no such disciplinary proceeding was taken up against the complainant for misconduct. There is also not evidence on record that the action taken was unconnected to the dispute pending. On the contrary the oral evidence adduced by the workman clearly shows that for the union activities taken by him the management took the punitive action against him. At the cost of repetition it is stated that during the proceeding the management laid no evidence to disprove the stand of the complainant. Hence it is concluded that the workman was subjected to unfair labour practice for the order of termination was passed against him during the pendency of Id. No. 122/2012.

Now coming to the prayer of the complainant with regard to his reinstatement to service with full back wages and consequential benefits it is worth mentioning here that the Hon'ble Supreme Court of India in the case of **Jaipur Zila Sehkari Bhoomi Vikas Bank Limited vs. Ram Gopal Sharma reported in (2002) 2 SCC 244** it has been held that when the application filed u/s 33(2)(b) of the Id. Act is dismissed the same would have the effect of continuance of employee in the employment i.e. as if the employee had never been dismissed.

Here is a case where the workman/applicant has approached the tribunal by filling the application u/s 33A of the Id act alleging violation of the provisions of section 33(2)(b) of the ID Act. In the preceding paragraphs it has been held that the management in gross violation of the provisions of section 33(2)(b) of the Id Act passed an order of dismissal against the applicant. This order is not sustainable in eye of law. Hence, it is observed that the order of dismissal is liable to be set aside and the applicant workman shall be deemed to be in service on 26th august 2013 and thereafter with full back wages. These issues are accordingly answered in favour of the applicant. Hence, ordered.

ORDER

The complainant is accordingly decided in favour of the workman and it is held that the order of the dismissal passed by the management against the applicant was in gross violation of the provision of 33(2)(b) of the ID Act. The workman is deemed to be in service on 26.08.2013 and thereafter with full back wages. The management is further directed to reinstate the workman with immediate effect. Send this award to the appropriate government for notification as required u/s 17 of the Id. Act. Copy be supplied to the parties and the record be consigned in the record room.

The complaint is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली 20 जून, 2019

का.आ.1117.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार *मैसर्स बी.सी.सी.एल.*के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्याः 46/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/06/2019 को प्राप्त हुआ था।

[स. एल.–20012/328/1999–आई.आर.(सीएम-1)]

एस.सी.राय, अनुभाग अधिकारी

New Delhi, the 20th June, 2019

S.O. 1117.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. *No. 46 of 2000*) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 17.06.2019.

[No. L-20012/328/1999-IR(CM-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 46/2000

Employer in relation to the management of Katras Area of M/S BCCL,

AND

Their workman

Present: Shri D.K.Singh, Presiding Officer.

Appearances:

For the Employers :- Shri D.K.Verma, Advocate

For the workman. :- None

State : Jharkhand. Industry-Coal

Dated- 31/05/ 2019

AWARD

By order No. L-20012/328/1999-IR(C-I) dated 20/01/2000 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the workman Basant Bhuia was in employment of BCCL till the day of his death i.e. 01.11.1995 ? If yes then whether denial of employment to his dependent son under NCWA –V by the management is legal? If not then to what relief the workman and his dependent is entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workmen left appearing before the Tribunal. Subsequently regd. notices was issued to the workman but even then no one appeared on behalf of the workman. Case is pending since long, so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D.K.SINGH, Presiding Officer

नई दिल्ली, 20 जून, 2019

का.आ. 1118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार *मैसर्स बी.सी.सी.एल.*के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्याः 123/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/06/2019 को प्राप्त हुआ था।

[सं.एल.–20012/39/1999–आई.आर.(सी-1)]

एस.सी.राय, अनुभाग अधिकारी

New Delhi, the 20th June, 2019

S.O. 1118.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. *No. 123 of 1999*) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 17.06.2019.

[No. L-20012/39/1999-IR(C-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 123/1999

Employer in relation to the management of Jitpur Colliery M/S IISCO

AND

Their workman.

Present: Shri D.K.Singh, Presiding Officer.

Appearances:

For the Employers :- None

For the workman. :- None

State : Jharkhand. Industry-Coal

Dated- 29/04/ 2019

AWARD

By order No. L-20012/39/1999-IR(C-1) dated 04/06/1999, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the Bihar Colliery Kamgar Union for regularization of the 13 workman, as per list enclosed, working as stone cutter in the Jitpur Colliery of IISCO is justified ? If yes to what relief the workmen are entitled and from what date?"

Note:-list of workmen is not enclosed/received alongwith order of reference.

2.After receipt of the reference, both parties were noticed but both the parties failed to appear before this Tribunal. Subsequently Two regd. notices were issued but even then none of the parties appeared. Case is pending since long and workmen is not appearing before Tribunal so it appears that the workmen has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D.K. SINGH, Presiding Officer

नई दिल्ली 20 जून, 2019

का.आ.1119.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार *मैसर्स बी.सी.सी.एल.*के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्याः 149/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को *17/06/2019* को प्राप्त हुआ था।

[सं.एल.–20012/181/1996–आई.आर.(सी-1)]

एस.सी.राय, अनुभाग अधिकारी

New Delhi, the 20th June, 2019

S.O. 1119 .—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. *No. 149 of 1997*) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 17.06.2019.

[No. L-20012/181/1996-IR(CM-I)]

S.C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 149/1997

Employer in relation to the management of Bararee Colliery of M/S BCCL,

AND.

Their workmen.

Present: Shri D.K.Singh, Presiding Officer.

Appearances:

For the Employers :- Shri U.N.Lall, Advocate

For the workman. :- None

State : Jharkhand. Industry-Coal

Dated-30/05/ 2019

AWARD.

By order No. L-20012/181/1996-IR(C-I) dated 14/08/1997 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the management of Bararee Colliery in denial to protect the wages in respect of Sri Gorelal Dhari, Biranchi Hari, Sarjoo Mahato , Dhinewhwar Nonia, Shankar Pandit, Mangru Bhuia, Shyam Nandan Paswan and Ram Bilas General Mazdoor is justified ? If not, to what relief are the concerned workmen entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workmen left appearing before the Tribunal. Subsequently two regd. notices were issued to the workman but even then no one appeared on behalf of the workman. Case is pending since long, so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D.K.SINGH, Presiding Officer

नई दिल्ली, 21 जून, 2019

का.आ. 1120.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह .श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2019 को प्राप्त हुआ था।

[सं. एल–22012/131/2012–आई.आर.(सी.एम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st June, 2019

S.O. 1120.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2012)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on *11/06/2019*.

[No. L-22012/131/2012–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/27/2012-13 Date: 17.05.2019.

Party No.1 : The Sub Area Manager,
Hindustan Lalpeth O/c Mines of Chandrapur Area,
Western Coalfields ltd., Post Padmapur,
Distt. Chandrapur (M.S.)

Versus

Party No.2 : The Joint General Secretary,
Rashtriya Colliery Mazdoor Congress,
C/o Shri C.R. Tembhre, Vaidhay Nagar,
Near Ayyappa Mandir, Tukum Ward No. 2,
Distt. Chandrapur (M.S.).

AWARD

(Dated: 17th May, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their Union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter **No.L-22012/131/2012-IR (CM-II) dated 26.10.2012,** with the following schedule:-

"Whether the action of the management of Lalpeth Open Cast sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri Hemant Kumar, the dependant son of Shri Chilkarammya Haanumantu, Ex-Dumper Operator who has already put in 35 years service which is contrary to the provisions of Para 9.4.4 of NCWA is legal & justified? To what relief is the workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Rashtriya Colliery Mazdoor Congress ("the union" in short) filed the statement of claim and the management of WCL (here-in-after referred to as the "Party No. 1") filed its written statement.

The case of the union as projected in the statement of claim is that, Shri Chilka Hanumantu has retired after completing the service of 35 years from 20.11.1975 to 31.07.2012 and Hemant Kumar is son of Chilka Hanumantu. According to the union, NCWA-III Clause 9.4.4 provides service of one dependent. According to the union, Party No. 1 wrongfully denied the appointment of Hemant Kumar, which is against the provisions of NCWA-III and circular issued by Coal India Limited on 16.01.2010. According to the union, these provisions clarify that, employment of at least one of the dependants of such employee, who retire or die after putting at least 35 years of service.

3. According to the union, on the basis of above provisions, they demand service of Hemant Kumar as per Instruction and Circular of NCWA and Agreement between CIL and the union. According to them, provisions of NCWA-III is applicable and effective even after enforcement of NCWA-IV or subsequent NCWAs i.e. in this way, son of the employees is eligible and qualified according to the terms of WCL, but Party No. 1 rescinded this provisions arbitrarily. In this way, they prayed that, reference is decided in favour of the workman and direction may be issued to the Party No. 1 that, son of the petitioner may be allowed to get employment as per above provisions.

4. By filing written statement on behalf of the Party No. 1, denied all material facts by asserting that, these provisions are not applicable in present circumstances, because 01.07.2011 to 30.06.2016, NCWA-IX came into existence, but they admitted that, Circular issued by the Coal India Limited on 22.06.1977 and NCWA-III came into existence on 20.03.1984 between union and Party No. 1. Party No. 1 asserted that, para no. 8 & 9, 11 to 16 are the matter of records, para 18 of statement of claim needs no comments, but according to the Party No. 1, above NCWA is no more in existence.

5. According to the Party No. 1, provision mentioned in NCWA-III as Clause 9.4.4 was deleted or expunged from new provisions of NCWA-IV to NCWA-IX, so from 01.01.1987 till today, no dependant of workers was employed by the Party No. 1. The Party No. 1 also admitted that, Chilka Hanumantu was a Dumper Operator, who retired from services on 30.06.2012. According to the Party No. 1, outside appointment are made by giving notice to the public and after due selection, as per prevalent practice and procedure. According to them, Hon'ble Supreme Court in the case of Umadevi Vs. State of Karnataka held that, "No unconstitutional appointment can be made now in the matter of public employment by the state …… It violates article 14 & 16 of the Constitution". So, they prayed that, this reference be answered in the negative in favour of Party No. 1 and also prayed that, action of the Party No. 1 i.e. WCL declared legal and justified.

6. **Point of determination:**

i. Whether Hemant Kumar is entitled for employment under NCWA-III?

ii. Whether he is entitled to any other relief?

Reasons for determination:

7. On behalf of the union, Shri Chilka Hanumantu and on behalf of the Party No. 1, Shri Ashok Kumar Verma filed their evidence on affidavit. They were cross-examined by the opposite party. The union also filed written notes of argument by asserting that, above NCWA-III provides service of dependant after completing 35 years of service, they base their argument on the Circular of Coal India Limited and other provisions of Party No. 1. They also argued that, Agreement was covered with all categories of employees in the Coal Industry, who were covered under National Coal Wages Agreement I to VII. So, they argued that, Hemant Kumar is entitled to employment in WCL and Party No. 1 denied his legal rights. In support of their argument, they examined Shri Chilka Hanumantu. Now I want to discuss the evidence part.

8. Chilka Hanumantu in para 7 & 8 of his cross-examination admitted that, in his knowledge, no child of any Dumper Operator got job. He asserted that, in Bihar Coal Mines, some Dumper Operator's child got job, but he is not in position to mention their names. In his cross-examination, he asserted that, in 1977, Coal India issued such type of circular, but in para 8 of his cross-examination, he asserted that, he has no knowledge about the circular, which was issued as an Implementation of Instruction. He also admitted that, "In cases of Dumper operators, dependant did not get job ……. I have no knowledge about NCWA-IX, which came into force from 01.07.2011". In this way, this witness gave contradictory statement as per their chief examination, which shows that, he virtually no knowledge about the circular and NCWA, but it also appears that, he gave statement on the basis of hearing of some facts. Now I want to see the Party No. 1's evidence.

9. Party No. 1 examined his Personnel Assistant Manager, Shri Ashok Kumar Verma in support of their defence. In para 15 of his cross-examination, he admitted that, father of Hemant Kumar was working as a Dumper Operator in WCL, he has retired and still alive and he filed an application before the GM, Chandrapur regarding job of Hemant Kumar as his dependant. He also admitted that, father of Hemant Kumar had worked for more than 35 years and in document of W-5, words used are correct. He also admitted that, NCWA-II is not cancelled but not applicable. He also asserted that, at the time of scarcity of man power was there so such type of facility was issued in this direction, but on the basis of such circular, nobody was appointed.

10. Shri Ashok Kumar Verma asserted that, he has knowledge about the agreement NCWA-III (Exhibit W-3), but according to him L.Rs of the workmen are not entitled for any compensatory appointment. This witness remained unrebutted in his cross-examination. It also appears that, he gave statement on the basis of the documents as well as personal knowledge of some facts. Nothing shows that, he is prejudiced to the workman or Hemant Kumar. He gave a fair statement and it appears to be reliable. Now I want to see the legal position.

11. Case laws:-Yogender Pal Singh and others Vs. Union of India and others AIR 1987 SC 1015 and Employers in relation to the management of Bhowra Area No. XI of Ms BCCL, Dhanbad Vs. the Presiding Officer, Dhanbad W.P. (L) No. 2412 of 2002 dated 26.07.2012, in which Hon'ble Court laid down the following principles:-

i. ""There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state".

ii. "No dependent of an employee of the State or its instrumentality is entitled to claim preference in the matter of on public employment on the basis of the service of his father/parent is no longer res integra in view of the specific provision contain in Part III of the Constitution of India and also laid down in the judgment delivered by the Hon'ble Supreme Court of India in number of cases".

iii. "Article 16, cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State: and cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject".

iv. "The new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified Collector to dull up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the constitution".

12. Judging the present case in hand with the touch stone of the principles as mentioned above, my humble opinion is that, union fails to prove his case. So, union/workman is not entitled to any relief. Hence, it is ordered:.

ORDER

The action of the management of Lalpeth Open Cast sub Area of Chandrapur Area of Western Coalfields Ltd., in denying employment to Shri Hemant Kumar, the dependant son of Shri Chilkarammya Haanumantu, Ex-Dumper Operator who has already put in 35 years service which is contrary to the provisions of Para 9.4.4 of NCWA is legal & justified. The workman is not entitled to any relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 21 जून, 2019

का.आ.1121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह .श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 140/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2019 को प्राप्त हुआ था।

[सं.एल–22012/153/2002–आई.आर.(सी.एम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st June, 2019

S.O. 1121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2003)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s F.C.I and their workmen, received by the Central Government on *11/06/2019*

[No. L-22012/153/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/140/2003 Date: 09.05.2019.

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajni, Nagpur.

Party No.1(b) : The Managing Director,
Food Corporation of India,
16/20 Barakhambha Lane, New Delhi,

New Delhi – 110001.

Versus

Party No.2 : The Regional Vice President,
Food Corporation of India Employees Association,
C/o FCI, Ajni, Nagpur.

AWARD

(Dated: 09th May, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their Union, Food Corporation of India Employees Association for adjudication, as per letter **No.L-22012/153/2002-IR (CM-II) dated 09.05.2003,** with the following schedule:-

"Whether the action of the management of Food Corporation of India, through its Managing Director, New Delhi in not considering the request of the senior employees in Grade-II such as Shri N.S, Shukla, A.M. Mukherjee, R.S. Lokhande, J.R. Godbole, S,S. Halve, D.S. Yadav, B.S. Jaipurkar and others to maintain parity with their juniors encadred in PP sub Cadre, (who were initially juniors in parent cadre) is legal and justified? If not, to what relief they are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Food Corporation of India Employees Association, ("the union" in short) filed the statement of claim and the management of FCI (here-in-after referred to as the "Party No. 1") filed its written statement.

3. The case of the union as projected in the statement of claim is that, workmen were appointed in FCI in the year of 1972. In 1976, the Party No. 1 invited option from its existing employees from different cadres for their transfer to Technical cadre, but some employees challenged this order before the Hon'ble Punjab & Haryana High Court, in which option proceeding of FCI employees was quashed. This order was confirmed by the Hon'ble Supreme Court in W.P. (C) No. 518/87. The Party No. 1 decided to protect pay of the repatriated employee and for reasons created a new sub cadre in the name of procurement and processing wing (PP cadre). According to the union, this action of the Party No. 1 was without logic and legal aspect.

4. According to the union, a senior employee in the same cadre must receive his pay at par or more than that of junior employee, but senior in the cadre are step up to the junior employee i.e. aggrieved workmen and their junior, who enjoyed promotion and higher pay in the post of AG-II and Assistant Grade-I.

According to the union, juniors are presently continuing in the same seniority list of workmen and who are drawing more pay than workmen senior, but workmen are entitled for pay and benefits at par with their juniors, so they prayed that, Tribunal direct the party No. 1 to fix the pay of the workmen at par with their junior in the seniority list from the date, the junior have started more pay and all arrears due may be paid to the aggrieved workers.

5. The Party No.1 denied all material facts except that, Hon'ble Punjab & Haryana High Court quashed the proceedings and order of FCI, which relating to from transfer from General Cadre to Technical Cadre, but according to the Party No. 1, this is to be done in public interest, because non-availability of eligible candidate through direct recruitment and FCI could not make recruitment in bulk for filling of vacant post.

6. According to the Party No. 1, the past seniority of optees from Depot cadre was counted in the equitted grade in the Techical cadre of their permanent transfer provided the optee gave an undertaking in writing that they would not claim seniority over and above the employees already promoted and holding the post of AG II (Technical) AG-I (Technical) Assistant Manager (Quality Control) as the case may be in the Technical cadre.

7. According to the Party No. 1, Technical Cadre optees (Approximately 340 employees) on the ground that, they would be placed in seniority and blocked their promotional prospects. Both of the Writ Petitions namely W.P. No. 506/1981 and W.P. No. 518/1987 were finally heard by the Apex Court on 19.02.1991 and Hon'ble Apex Court observed that, "After the transfer of the petitioners of W.P. No. 506/1987 to the Technical side ---------340 persons go back their promotional prospects would be affected and there will be stagnation".

8. According to the Party No. 1, on the directions of Hon'ble Supreme Court, Party No. 1 created sub cadre namely PP cadre, which had been kept in abeyance was also revived. The Party No. 1 also took approval from Govt. of India on 10.02.1992. In this way, Party No. 1 took an objection that, this Tribunal has no jurisdiction to entertain the said reference. According to them, union raised some allegations in para 14, were false. PP cadre employees have been

drawing more pay than their seniors is not correct. Seniority list of the depot cadre staff only for purpose of determining same for promotion in Technical cadre.

9. According to the Party No. 1, seniors drawing more or equal pay in lower pot, so allegation levied by the union are false and denied. So, they prayed that, reference is to be rejected.

10. Union filed rejoinder on same footing as statement of claim and denying the all facts, which is raised by the Party No. 1 in their W.S. According to the union, the number of posts earmarked for Manager (Depot) was manipulated by the Party No. 1. It is also denied that, special cadre created on the direction of the Supreme Court, so they prayed that, their prayer is allowed and arrears must be paid to the aggrieved workers.

11. **Point of determination:**

i. Whether Party No. 1 is not considering the request of senior employees in Grade-II?

ii. Whether workmen require parity with their juniors PP cadre employees?

iii. Whether they are entitled to any relief?

Reasons for determination:

12. Both parties produced their evidence on affidavit, but union failed to produce their witness for cross-examination, so my predecessor closed the evidence of union on 05.01.2015 by expunging the evidence on affidavit of witness, Narendra Shukla i.e. this evidence on affidavit is not read, because this affidavit was not verified and cross-examined by the Party No.1. Moreover Party No. 1 filed evidence on affidavit of Shri Pandurang M. Nirmale, AGM General FCI. This witness was present for cross-examination, but union not availed the opportunity of cross-examination. This Tribunal verified on oath, the contents of the affidavit on 23.08.2018. So affidavit of P.M. Nirmale remained unrebutted.

13. Both parties also produced documents, but nobody proved these documents in court. Moreover, evidence on affidavit of both the parties is in support of their pleadings, so they may be called oath against oath i.e. no independent or inference can be drawn by this evidence. Burden of proof of fact lies on union, but union failed to discharge his burden to prove the pleadings. In my opinion, without proving the pleadings of the statement of claim, union is not entitled to any relief. Hence, it is ordered:

ORDER

The action of the management of Food Corporation of India, through its Managing Director, New Delhi in not considering the request of the senior employees in Grade-II such as Shri N.S, Shukla, A.M. Mukherjee, R.S. Lokhande, J.R. Godbole, S,S. Halve, D.S. Yadav, B.S. Jaipurkar and others to maintain parity with their juniors encadred in PP sub Cadre, (who were initially juniors in parent cadre) is legal and justified. The workmen are not entitled to any other relief.

S.S. GARG, Presiding Officer

नई दिल्ली, 21 जून, 2019

का.आ.1122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मालवीय नैशनल इंस्टिट्यूट ऑफ़ टेक्नोलॉजी जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 133/2005, 134/2005, 135/2005, 137/2005 & 136/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/06/2019 को प्राप्त हुआ था।

[सं.एल–42012/57, 75, 74, 73, 72/2005–आई.आर.(सी.एम– II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 21st June, 2019

S.O. 1122 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2005, 134/2005, 135/2005, 137/2005 & 136/2005*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Malviya National Institute of Technology Jaipur and their workmen, received by the Central Government on *18/06/2019*.

[No. L-42012/57, 75, 74, 73, 72/2005–IR (CM-II)]

RAJENDER SINGH, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी.प्रकरण सं.133 / 2005, 134 / 2005, 135 / 2005, 137 / 2005 & 136 / 2005

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

(1) रेफरेन्स नं.-L-42012/57/2005–IR(CM-II) दिनांक 23/11/2005

(2) रेफरेन्स नं.-L-42012/75/2005–IR(CM-II) दिनांक 23/11/2005

(3) रेफरेन्स नं.-L-42012/74/2005–IR(CM-II) दिनांक 23/11/2005

(4) रेफरेन्स नं.-L-42012/73/2005–IR(CM-II) दिनांक 23/11/2005

(5) रेफरेन्स नं.-L-42012/72/2005–IR(CM-II) दिनांक 23/11/2005

1. कानाराम पुत्र श्री हरिनारायण, जाति मीणा, निवासी चारणवास, पो.दूदली, तहसील बस्सी, जिला जयपुर।

2. सन्तोष गुर्जर पुत्र श्री पूरणमल गुर्जर, निवासी 150 मोती कॉलोनी, गूजरों का मौहल्ला, गोविन्द नगर, पूर्व आमेर रोड, जयपुर राजस्थान

3. हेमराज बैरवा पुत्र श्री रामनारायण बैरवा, जाति बैरवा, निवासी ग्राम व पोस्ट घॉस, तहसील व जिला टोंक राजस्थान

4. महेन्द्र वर्मा पुत्र श्री बाबूलाल वर्मा, जाति बलाई, निवासी 117/1 विजय कॉलोनी सेक्टर नं.1 मालवीय नगर, जयपुर

5. बन्ना लाल गुर्जर पुत्र श्री रामस्वरूप गुर्जर जाति गुर्जर, निवासी ग्राम धपावनकलां, पो.कोलाना, तहसील बसवा, जिला दौसा।

—प्रार्थीगण श्रमिक

बनाम

मालवीय नेशनल इन्स्टीट्यूट ऑफ टैक्नोलोजी (डीम्ड यूनिवर्सिटी) जयपुर, मालवीय नगर, जे.एल.एन. मार्ग, जयपुर – जरिये निदेशक।

—अप्रार्थी नियोजक

उपस्थित :—

प्रार्थीगण की तरफ से : श्री संजय राहड़ – एडवोकेट

अप्रार्थी की तरफ से : श्री लक्ष्मण सिंह कच्छावा – एडवोकेट

: अधिनिर्णय :

दिनांक : 28.05.2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 23.11.2005 को उपयुर्क्त सभी प्रकरणों में औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (ए) व 2 (ए) के प्रावधानों के अन्तर्गत निम्नांकित विवाद अधिनिर्णयन हेतु इस अधिकरण को संदर्भित किये गये। प्रार्थी बन्ना लाल गुर्जर से सम्बन्धित विवाद को दिनांक 16.12.2005 को संशोधित किया गया है इस संशोधन द्वारा बन्ना लाल गुर्जर के पदनाम पियोन (चपरासी) को स्टेनोग्राफर/एल. डी.सी.के रूप में परिवर्तित किया गया है। सुविधा की दृष्टि से इन पांचों संदर्भित विवादों को निम्नानुसार समेकित किया गया है।

"Whether the action of the management of Malaviya National Institute of Technology, Jaipur in terminating the services of Shri Kanaram S/o Sh. Harinarayan Meena, Sh. Santosh Gurjar S/o Sh. Pooranmal Gurjar, Sh. Hemraj Bairwa S/o Sh. Ramnarayan Bairwa, Sh. Mahendra Verma S/o Sh. Babulal Verma -Peons & Sh. Bannalal Gurjar S/o Sh. Ramswroop Gurjar, Steno-Typist(LDC) w.e.f. 28.11.2003 is legal and justified? If not, to what relief the workmen are entitled to?"

2. उपर्युक्त संदर्भित विवादों में विपक्षी मालवीय नेशनल इन्स्टीट्यूट ऑफ टैक्नोलोजी, मालवीय नगर जयपुर द्वारा सभी प्रार्थीगण को दिनांक 28.11.2003 को एक ही रीति से पृथक किया जाना आक्षेपित है। इसलिये इन पॉचों संदर्भित विवादों के सम्बन्ध में उभयपक्ष के तर्कों, एवं सुसंगत विधि का प्रस्तुत की गयी साक्ष्य के आधार पर विवेचन कर एकीकृत रूप से अधिनिर्णयण पारित किया जा रहा है।

3. उपयुर्क्त संदर्भित विवाद अधिकरण में प्राप्त होने पर प्रार्थीगण व विपक्षी को उपस्थिति हेतु संसूचित कर प्रार्थीगण को उनके दावे के अभिकथन प्रस्तुत करने का निर्देश दिया गया। प्रार्थीगण ने दिनांक 20.12.2005 व 18.1.2006 को अपने–अपने दावे के अभिकथन प्रस्तुत किये। प्रार्थीगण में से मात्र बन्नालाल गुर्जर की कथित नियुक्ति स्टेनोग्राफर एल.डी.सी.के पद पर हुई जबकि

शेष प्रार्थीगण पियोन (चपरासी) के पद पर नियुक्त हुए। प्रार्थीगण ने अपने दावे के अभिकथन में, कानाराम ने वर्ष 2000 में (तिथि अंकित नहीं), संतोष गुर्जर ने 15.2.2000 को, हेमराज बैरवा ने 4.3.2001 को व महेन्द्र वर्मा ने 1.7.2001 को चपरासी के पद पर 1800 रूपये मासिक वेतन पर तथा बन्नालाल गुर्जर ने दिनांक 1.4.2000 को स्टेनो टाईपिस्ट(एल.डी.सी.) के पद पर 3000 रूपये मासिक वेतन पर विपक्षी द्वारा नियुक्त किया जाना कहा है। प्रार्थीगण का कथन है कि विपक्षी औद्योगिक संस्थान की परिभाषा में आता है। जिसे नियोजक कहा गया है। प्रार्थीगण विपक्षी के कर्मकार हैं जिन्होने निष्ठापूर्वक अपने कार्य का निष्पादन किया। प्रार्थीगण और विपक्षी के मध्य नियोजक कर्मकार का सम्बन्ध है। दिनांक 28.11.2003 को विपक्षी ने अनुचित रूप से विपक्षीगण की सेवा समाप्त कर दी। प्रार्थीगण को कोई नोटिस या नोटिस वेतन एवं छंटनी–प्रतिकर का भुगतान विपक्षी ने नहीं किया, न ही उनकी वरिष्ठता सूची बनाई। प्रार्थीगण ने सेवा समाप्ति से पूर्व एक कैलेण्डर वर्ष की अवधि में 240 दिन से अधिक अवधि तक लगातार नियमित कार्य किया है। विपक्षी ने प्रार्थीगण की सेवा समाप्ति के पश्चात नये श्रमिकों की भर्ती भी की है। इस प्रकार विपक्षी ने अधिनियम की धारा 25 (एफ) (जी) व (एच) तथा नियम 77 व 78 का उल्लंघन किया है। प्रार्थीगण के विरूद्ध कोई घरेलू जांच नहीं की गई और न ही कोई आरोप सिद्ध किया गया। अतः प्रार्थीगण की सेवा समाप्ति को अवैध घोषित कर दिनांक 28.11.2003 से उन्हें निरन्तर सेवा में समस्त सेवा लाभ सहित लिया जावें तथा पुनः नियुक्ति तक पिछले वेतन पर ब्याज दिलवाया जावे।

4. विपक्षी ने 24.6.2003 को सभी प्रकरणों में वादोत्तर प्रस्तुत करते हुए दावे के अभिकथनों में वर्णित तथ्यों को अस्वीकार किया। अप्रार्थी का कथन है कि प्रार्थीगण को उसने कभी नियुक्ति नहीं दी न हीं वेतन भुगतान किया इसलिये प्रार्थीगण के सेवा मुक्त किये जाने का कोई अवसर ही उत्पन्न नहीं होता। प्रार्थीगण ने विपक्षी संस्थान के अधीन 240 दिन कार्य कभी नहीं किया। विपक्षी ने अधिनियम के किसी भी प्रावधान का उल्लंघन कभी नहीं किया। प्रार्थीगण को यदि काम पर लिया गया है तो किसी ठेकेदार के माध्यम से लिया गया। ऐसे व्यक्ति अधिनियम की धारा 2 (एस) के अनुसार कर्मकार की परिभाषा में नहीं आते न ही विपक्षी प्रार्थीगण का नियोजक है। अतः दावे अस्वीकार किये जावें।

5. प्रार्थीगण ने अपने साक्ष्य में प्रत्येक प्रकरण में सम्बन्धित प्रार्थी को परीक्षित किया तथा प्रलेखिय साक्ष्य के रूप में प्रदर्श पी–1 से पी–11 तक प्रलेख प्रदर्शित किये।

6. विपक्षी ने सभी विवादों में अपने साक्ष्य में श्री सवाई सिंह, केयर–टेकर को परीक्षित किया तथा प्रलेखीय साक्ष्य में एन.ए.–1 से 36 तक प्रलेख प्रदर्शित किये।

7ण दिनांक 8 व 9.5.19 को मैनें उभयपक्ष के प्रतिनिधियों के परस्पर विरोधी तर्कों एवं प्रस्तुत किये गये न्यायिक दृष्टान्तों में प्रतिपादित विधि पर साक्ष्य के संदर्भ में मनन किया।

8. प्रार्थीगण की और से यह कहा गया है कि विपक्षी ने प्रार्थीगण को विभिन्न तिथियों पर चपरासी तथा बन्नालाल गुर्जर स्टेनोटाईपिस्ट को मौखिक रूप से नियुक्ति दी है। विपक्षी द्वारा किसी ठेकेदार के माध्यम से काम पर रखने का जो कथन किया गया है वह किसी प्रकार विश्वसनीय नहीं है, क्योंकि विपक्षी ने अपने वादोत्तर में किसी ठेकेदार का नाम वर्णित ही नहीं किया है। न ही, उक्त ठेकेदार को अपने साक्ष्य में परीक्षित किया है। उनका यह भी तर्क है कि प्रार्थीगण की उपस्थिति विपक्षी द्वारा ही अंकित की जाती थी तथा वेतन भुगतान भी विपक्षी द्वारा ही किया जाता था। इसलिये प्रार्थीगण व विपक्षी के मध्य नियोजक व कर्मकार का सम्बन्ध प्रमाणित है। साक्ष्य में उपस्थिति पंजिका एवं अन्य प्रलेख प्रार्थीगण द्वारा लगातार 240 दिन कार्य सम्पादन करने के प्रमाण हैं। विपक्षी द्वारा दिनांक 28.11.2003 को सेवा समाप्ति से पूर्व कोई नोटिस या नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान न किया जाना स्वीकार किया है। इस प्रकार की गयी सेवा समाप्ति अधिनियम धारा 25 (एफ) (जी) तथा (एच) के अन्तर्गत अवैध है। प्रार्थीगण समस्त विगत परिलाभों तथा सेवा में निरन्तरता सहित पुर्नस्थापना के अधिकारी है। प्रार्थीगण की और से अपने तर्क के सम्बन्ध में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत कियेः–

1. (2003) 4 एस.सी.सी.619 प्रमोद झा व अन्य बनाम स्टेट ऑफ बिहार व अन्य

2. (1990) 3 एस.सी.सी.682 पंजाब एल.डी.एंड.आर.कार्पोरेशन बनाम पी.ओ.लेबर कोर्ट, चण्डीगढ़ व अन्य।

9. विपक्षी का यह प्रमुख तर्क है कि प्रार्थीगण को विपक्षी द्वारा न तो सेवा में नियुक्त किया गया और न ही वेतन भुगतान किया गया वरन ऐक ठेकेदार मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर से अनुबन्ध कर ठेकेदार के माध्यम से सेवाएं प्राप्त की गई। विपक्षी ने ठेकेदार द्वारा नियुक्त किये गये व्यक्तियों को अपने विभिन्न कार्यों पर लगाया तथा ठेकेदार ने ही उन व्यक्तियों को मजदूरी का संविदाजनित भुगतान किया। प्रस्तुत की गई उपस्थिति पंजिका के अनुरूप ठेकेदार, प्रार्थीगण को मजदूरी का भुगतान करता था। इस प्रकार प्रार्थीगण और विपक्षी के मध्य नियोजक व कर्मकार के सम्बन्ध कभी नहीं रहे। न ही उनकी छंटनी की गई। ठेकेदार से अनुबन्ध के समापन पर ठेकेदार द्वारा ही प्रार्थीगण के सेवा समाप्त की गई। विपक्षी के प्रलेखीय साक्ष्य से इस तथ्य की पुष्टि हुई है तथा प्रार्थीगण के वेतन से ठेकेदार का कमीशन काटकर वेतन भुगतान किया जाना भी प्रमाणित है। अतः दावे निरस्त किये जावें, विपक्षी ने अपने तर्क के समर्थन में निम्नलिखित न्यायिक दृष्टान्त प्रस्तुत कियेः–

(1) (2001) 7 एस.सी.सी –1, स्टील ऑथरिटी ऑफ इण्डिया लिमिटेड व अन्य बनाम नेशनल यूनियन वाटरफ्रान्ट वर्कर्स एवॅ अन्य

(2) (2004) 7 एस.सी.सी.112, ए.उमारानी बनाम रजिस्ट्रार, को ऑपरेटिव सोसायटीज व अन्य

(3) (2005) 1 एस.सी.सी 639, महेन्द्र एल.जैन व अन्य बनाम इन्दौर डेवलपमेंट अथारिटी व अन्य

(4) (2005) 5 एस.सी.सी 122, माध्यमिक शिक्षा परिषद, यू.पी.बनाम अनिल कुमार मिश्रा व अन्य

(5) (2006) 1 एस.सी.सी 667, स्टेट ऑफ यू.पी.बनाम नीरज अवस्थी व अन्य

(6) (2008) 2 एस.सी.सी 552, चन्द्र शेखर आजाद कृषि एवँ प्रौद्योगिकी विश्वविद्यालय बनाम यूनाइटेड़ ट्रेड्स कांग्रेस व अन्य

10. उभयपक्ष के अभिवचनों साक्ष्य एवं विधि के परिशीलन के उपरान्त इन विवादों में निम्नांकित बिन्दु मुख्य रूप से विचारणीय उत्पन्न हुए हैं :–

(1) क्या प्रार्थीगण व विपक्षी के मध्य नियोजक व कर्मकार के सम्बन्ध अस्तित्व में है ?

(2) क्या प्रार्थीगण ने विपक्षी के अधीन सेवा समाप्ति तिथि के पूववर्ती 12 कैलेण्डर मासों की अवधि में 240 दिन सतत सेवा की है ?

(3) क्या प्रार्थीगण को सेवा समाप्ति के पूर्व विपक्षी द्वारा नोटिस या नोटिस के बदले वेतन एवं छंटनी प्रतिकर का भुगतान न किये जाने से दिनांक 28.11.2003 को की गई प्रार्थीगण की सेवा समाप्ति अवैध है ?

बिन्दु संख्या – 1

11. विपक्षी की ओर से प्रस्तुत निर्णय स्टील ऑथरिटी ऑफ इण्डिया लिमिटेड व अन्य बनाम नेशनल यूनियन वाटरफ्रान्ट वर्कर्स एवँ अन्य में माननीय सर्वोच्च न्यायालय ने प्रधान नियोजक एवं संविदा श्रमिक के मध्य विद्यमान सम्बन्ध की प्रकृति का विवेचन करते हुए यह अभिमत व्यक्त किया है कि '' संविदा श्रमिक कर्मकार शब्द की एक प्रजाती हैं– जब एक कर्मकार किसी संस्थान के कार्य के सम्बन्ध में प्रधान नियोजक द्वारा किसी ठेकेदार के माध्यम से भाडे पर लिया जाता है तो ऐसा ठेकेदार मात्र एक अभिकर्त्ता के रूप में कार्य करता है। इसलिये कर्मकार और प्रधान नियोजक के मध्य एक नियोजक व कर्मकार के सम्बन्ध होते हैं, किन्तु जहॉ कर्मकार एक संस्थान के कार्य में या किसी कार्य के सम्बन्ध में ठेकेदार द्वारा भाडे पर लिया जाता है तो चूंकि वह ठेकेदार किसी अपेक्षित परिणाम देने हेतु संस्थान को आश्वस्त करता है अथवा वह संस्थान के किसी कार्य सम्पादन हेतु कर्मकार उपलब्ध करवाता है, ऐसी स्थिति में एक प्रश्न उत्पन्न हो सकता कि क्या ऐसा ठेकेदार मात्र छद्मांवरण (Camouflage) हैं। इस प्रश्न का उत्तर यदि सकारात्मक है, तो कर्मकार वास्तव में प्रधान नियोजक का कर्मचारी होगा किन्तु यदि उत्तर नकारात्मक है तो कर्मकार ठेकेदार का संविदाश्रमिक होगा। इस मार्गदर्शन के प्रकाश में साक्ष्य का विवेचन यह प्रकट करता है कि प्रार्थीगण को सीधे तौर पर प्रधान नियोजक मालवीय इन्स्ट्रीटयूट ऑफ टेक्नोलोजी द्वारा काम पर नहीं लगाया गया वरन विपक्षी द्वारा जब जब भी किसी कार्य विशेष को सम्पन्न करने के लिये सेवाओं की आवश्यकता होती, उसके लिये निविदा आमन्त्रित कर सेवाएं लेने के लिये ठेका दिया जाता था। इन विवादों में यद्यपि प्रार्थीगण की सेवाएं विपक्षी संस्थान के कार्य विशेष के सम्पादन के लिये ली गई है, किन्तु ये सेवाएं एक ठेकेदार मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर द्वारा नियुक्त व्यक्तियों की, ली गई है। विपक्षी ने नियुक्ति हेतु न तो कोई विज्ञप्ति प्रसारित की ओर न ही कोई विहित चयन प्रक्रिया का अनुसरण किया। इसके स्थान पर उसने ठेकेदार द्वारा नियुक्ति किये गये व्यक्तियों की सेवाएं ली। प्रार्थीगण से ली गई सेवाओं का भुगतान विपक्षी द्वारा प्रार्थीगण को नहीं किया जाता था, वरन् विपक्षी के संवेदक को विपक्षी द्वारा किया जाता था। जैसा कि विपक्षी के प्रलेख प्रदर्श एन.ए.–36 से प्रकट होता है। इस तथ्य से यह स्पष्ट है कि ठेकेदार द्वारा नियुक्त व्यक्तियों की सेवाएं विपक्षी संस्थान में कार्य सम्पादन हेतु ली गई। विपक्षी द्वारा अपनायी गयी यह व्यवसथा किसी छदमावरण के अन्तर्गत नहीं की गई वरन यह एक वास्तविकता प्रकट होती है। विपक्षी के साक्षी श्री सवाई सिंह, केयर–टेकर से की गई प्रतिपरीक्षा में इस तथ्य के प्रतिकूल कोई सुझाव प्रार्थीगण की और से नहीं दिया गया है कि ठेकेदार के माध्यम से ली गई प्रार्थीगण की सेवा, विपक्षी द्वारा श्रमिकों को देय सेवा सम्बन्धित परिलाभों से बचने के लिये छद्मांवरण (Camouflage) के अन्तर्गत की गई है। यहां यह उल्लेख किया जाना आवश्यक है कि प्रार्थीगण ने तो अपने साक्ष्य में यह भी नहीं कहा है कि उनकी सेवाएं ठेकेदार के माध्यम से विपक्षी ने ली है। इस विवेचन के पश्चात प्रार्थीगण वास्तविक रूप से ठेकेदार द्वारा नियुक्त कर्मकार प्रकट होते है जिनके लिये विपक्षी ने प्रार्थीगण से न तो सीधे तौर पर सेवा हेतु सम्पर्क किया न ही सेवा के प्रतिफल का भुगतान सीधे प्रार्थीगण को किया। इसलिये प्रार्थीगण के संविदा श्रमिक होने के कारण प्रार्थीगण व विपक्षी के मध्य नियोजक व कर्मकार के सम्बन्ध अस्तित्व में होना प्रमाणित नहीं होता है।

12. प्रार्थीगण की और से प्रस्तुत निर्णय पंजाब लैण्ड डवलपमेन्ट एण्ड रिक्लेनेशन कार्पोरेशन बनाम पी.ओ.लेबर कोर्ट, चण्डीगढ़ व अन्य में माननीय सर्वोच्च न्यायालय ने यह मागदर्शन दिया है कि अधिनियम की धारा 2 (ओ.ओ.) के अन्तर्गत छंटनी का अर्थ एक कर्मकार की सेवा का एक नियोजक द्वारा समापन किसी ऐसे कारण से है, जो इस धारा में अपवर्जित नहीं किये गये हैं। चूंकि इस धारा की मुख्य अपेक्षा नियोजक एवं कर्मकार के सम्बन्धों का अस्तित्व में होना है, तथा इन विवादों में प्रार्थीगण संविदा श्रमिक प्रमाणित हुये है, तथा विपक्षी से उनका प्रधान नियोजक व कर्मकार का सम्बन्ध प्रमाणित नहीं हुआ है इसलिये इस निर्णय में प्रतिपादित विधि प्रार्थीगण के पक्ष में सहायक नहीं है। माननीय सर्वोच्च न्यायालय ने अपने नवीनतम निर्णय 2019 एल. एल.आर.515 भारत हैवी इलेंक्ट्रिकल्स बनाम महेन्द्र कुमार जखमोला व अन्य (स्वंय अधिकरण द्वारा) में यह कहा है कि जहां कर्मकार का ठेकेदार द्वारा वेतन भुगतान किया जाता है– ठेकेदार द्वारा प्रधान नियोजक को कर्मकार सौंप दिये जाने के बाद प्रधान नियोजक के निर्देशानुसार कर्मकार द्वारा काम करने पर, यह नहीं कहा जा सकता कि कर्मकार प्रधान नियोजक के प्रशासनिक नियन्त्रण एवं पर्यवेक्षण के अर्न्तगत है, क्योंकि इस स्थिति में प्रधान नियोजक द्वारा जारी कोई नियुक्ति पत्र, प्रोविडेण्ट फण्ड या वेतन पर्ची नहीं है इसलिये मुख्य नियोजक एवं ठेकेदार के मध्य अनुबन्ध, छद्मांवरण (Camouflage) नहीं है।

13. अतः यह बिन्दु प्रार्थीगण के विरूद्ध निर्णित किया जाता है।

<u>बिन्दु संख्या :– 2</u>

14. इस बिन्दु के अन्तर्गत यह विचारणीय है कि क्या प्रार्थीगण ने विपक्षी के अधीन सेवा समाप्ति तिथि 28.11.2003 के तुरन्त पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन लगातार सेवा की है? बिन्दु संख्या–1 के अन्तर्गत प्राप्त किये गये निष्कर्ष के अनुसार प्रार्थीगण एवं विपक्षी के बीच नियोजक एवं कर्मकार के सम्बन्ध इस आधार पर प्रमाणित नहीं हुए हैं कि प्रार्थीगण मैसर्स त्रिलोक सोल्जर एण्ड मैनपॉवर नामक ठेकेदार द्वारा सेवा में लिये गये संविदा श्रमिक होना प्रमाणित हुए हैं प्रार्थीगण द्वारा प्रस्तुत उपस्थिति रजिस्टर को विपक्षी ने प्रार्थीगण की उपस्थिति के प्रमाण–स्वरूप इस अपवाद सहित स्वीकार किया है कि यह उपस्थिति ठेकेदार द्वारा प्रदत्त की गई सेवा के अन्तर्गत, उपस्थित व्यक्ति की विपक्षी संस्थान की किसी शाखा–विशेष में उपस्थिति का अभिलेख है, जिसके आधार पर ठेकेदार द्वारा वेतन का भुगतान उसका कमीशन काटकर उन्हें किया जाता था। प्रदर्श एन.ए.–36 इस सन्दर्भ में सुसंगत प्रलेख है जिसमें प्रार्थीगण के ठेकेदार का कमीशन काटकर उन्हें वेतन का भुगतान किया जाना प्रमाणित होता है। इस स्थिति में प्रार्थीगण चूंकि ठेकेदार के द्वारा नियुक्त संविदा श्रमिक थे उनकी सेवा समाप्ति के पूर्व 240 दिन की लगातार सेवा किये जाने का बिन्दु स्वतः अप्रासंगिक व असंगत हो जाता है। साक्ष्य के आधार पर यह तथ्य प्रमाणित नहीं है कि विपक्षी संस्थान के अधीन प्रार्थीगण ने कथित सेवा समाप्ति दिनांक 28.11.2003 के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक अवधि में लगातार कार्य किया है। अतः यह बिन्दु प्रार्थीगण के विरूद्ध निर्णीत किया जाता है।

बिन्दु संख्या :– 3

15. प्रार्थीगण का विपक्षी नियोजक से कर्मकार का सम्बन्ध होना पूर्ववर्ती विवेचन में प्रमाणित नहीं हुआ है। इसलिये अधिनियम की धारा 25 (औऔ) के अन्तर्गत प्रार्थीगण की सेवा समाप्ति ठेकेदार द्वारा किये जाना प्रमाणित होने पर ऐसी सेवा समाप्ति चूंकि एक अनुबन्ध के समापन के कारण हुई है छंटनी की परिभाषा में नहीं आती है। इसलिये अधिनियम की धारा 25 (एफ) के अन्तर्गत वैध छंटनी के लिये उपबन्धित अनिवार्यतायें जो कि छंटनी के पूर्व कर्मकार को नोटिस दिये जाने या नोटिस के बदले वेतन दिये जाने तथा छंटनी–प्रतिकर के भुगतान से सम्बन्धित हैं, का विवेचन किसी प्रकार अपेक्षित नहीं हैं। प्रार्थीगण चूंकि विपक्षी के अधीन कर्मकार होना ही प्रमाणित नहीं हुए है, विपक्षी द्वारा छंटनी की पूर्ववर्ती अनिवार्यताओं का अनुपालन किया जाना अपेक्षित नहीं है।

16. प्रार्थी की और से प्रस्तुत निर्णय प्रमोद झा व अन्य बनाम स्टेट ऑफ बिहार व अन्य में माननीय सर्वोच्च न्यायालय ने द्वारा अधिनियम की धारा 25 (एफ) व 2 (ओ.ओ.) के अन्तर्गत उपबन्धित आवश्यकताओं के सम्बन्ध में विधि प्रतिपादित की है, किन्तु विपक्षी के सम्बन्ध में अधिनियम की धारा 25 (एफ) की आवश्यक शर्तों की अनुपालना किया जाना अपेक्षित ही नहीं है। अतः इस निर्णय में पारित विधि तथ्यात्मक भिन्नता के कारण प्रार्थीगण के पक्ष में सहायक नहीं है। अतः यह बिन्दु भी प्रार्थीगण के विरूद्ध निर्णित किया जाता है।

17. विपक्षी द्वारा प्रस्तुत निणर्य ए.उमारानी बनाम रजिस्ट्रार, को ऑपरेटिव सोसायटीज और अन्य, महेन्द्र एल.जैन और अन्य बनाम इन्दौर डेवलपमेंट अथारिटी, माध्यमिक शिक्षा परीषद, यू.पी.बनाम अनिल कुमार मिश्रा और अन्य, स्टेट ऑफ यू.पी.बनाम नीरज अवस्थी व अन्य तथा चन्द्र शेखर आजाद कृषि एवॅ प्रौद्योगिकी विश्वविद्यालय बनाम यूनाइटेड ट्रेड्स कांग्रेस में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि आदेशात्मक प्रावधानों के विपरीत की गई नियुक्तियों के पश्चातवर्ती नियमितिकरण के सन्दर्भ में है। माननीय सर्वोच्च न्यायालय ने इन निर्णयों में यह कहा है कि ऐसी नियम विरूद्ध नियुक्तियों को समुचित सरकार नियमित नहीं कर सकती है, क्योंकि यह संविधान के अनुच्छेद 14 एवं 16 का उल्लंघन है। माननीय सर्वोच्च न्यायालय ने यह भी निर्देश दिया है कि जब कोई पद स्वीकृत ना हो तो ऐसे पद के लिये उसी पद पर पुनः–स्थापन का निर्देश नहीं दिया जा सकता। इन निर्णयों में पारित विधि तथ्यात्मक भिन्नता के कारण ससम्मान में लागू होना नहीं पाता हूॅ।

18. उपर्युक्त बिन्दुओं पर पारित निर्णय के आधार पर श्रम मन्त्रालय, भारत सरकार द्वारा संदर्भित विवादों का अधिनिर्णयन करते हुए इस प्रकार उत्तरित किया जाता है :

''प्रबन्धन मालवीय राष्ट्रीय प्रोद्योगिक संस्थान, जयपुर द्वारा प्रार्थीगण सर्व श्री कानाराम, सन्तोष गुर्जर, हेमराज व महेन्द्र वर्मा चपरासीगण तथा बन्ना लाल गुर्जर स्टेनोग्राफर/एल.डी.सी.की दिनांक 28.11.2003 को की गई सेवा समाप्ति विपक्षी संस्थान द्वारा नहीं की गई वरन् इन प्रार्थीगण के मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर जयपुर नामक ठेकेदार के संविदा श्रमिक होने से ठेकेदार द्वारा ही की गई। परिणामस्वरूप प्रार्थीगण विपक्षी संस्थान के विरूद्ध कोई अनुतोष पाने के अधिकारी प्रमाणित नहीं हुए हैं।

आदेश

19. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इन मामलों में न्यायनिर्णयन हेतु संदर्भों रिफरेन्स का उत्तर उपर्युक्तानुसार दिया जाता है। अधिनिर्णय की एक प्रति प्रत्येक संदर्भित–विवाद पत्रावली में संलग्न की जावें।

20. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

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